# CALIFORNIA PUBLIC UTILITIES COMMISSION
# TELECOMMUNICATIONS DIVISION
# INITIAL STAFF REPORT

**Pacific Bell (U 1001 C) and Pacific Bell Communications**
**Notice of Intent to File Section 271 Application**
**For InterLATA Authority in California**

**July 10, 1998**

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# CHAPTER I: INTRODUCTION

## A. EXECUTIVE SUMMARY

Telecommunication Division staff (staff) presents this Initial Staff Report addressing Pacific Bell's (Pacific's) compliance with the requirements of section 271 of the Federal Telecommunication Act of 1996 (FTA96 or Act).[1] This report was produced as directed by the June 26, 1998, Joint Managing Commissioner's and Administrative Law Judge's Ruling (June 26th Ruling) regarding Pacific's draft 271 application before the Commission.

To develop this report, staff relied on the extensive record in the proceeding and the relevant guidelines provided by the Federal Communications Commission (FCC) and the U.S. Department of Justice (DOJ). Based on its assessment of the record, staff believes that Pacific has provided evidence that it has complied with three items of the 14-point checklist in section 271 of the Act. Specifically, staff believes that Pacific has satisfactorily complied with the following checklist items: (3) Access to Rights-of-Way; (9) Access to Telephone Numbers; and (12) Dialing Parity.

Staff commends Pacific for its recent efforts to improve services to CLECs. However, Pacific has not provided evidence that it has complied with the remaining 11 checklist items. This is primarily a result of problems with Pacific's ability to provide adequate Operations Support Systems (OSS) and collocation to CLECs. These problems and other specific checklist problems are discussed in more detail in Chapters II and III of this report. Further, staff found that Pacific has not provided evidence that it is in compliance with section 272 of the Act regarding its separate affiliates that will provide interLATA service. This assessment is presented in Chapter IV.

Chapter II of the report contains the staff analysis of OSS and collocation issues. The report finds that Pacific does not offer competitors OSS on the same level of mechanization as its retail operations. The current OSS is largely manual, which increases the possibility of error. Staff has determined that Pacific's OSS needs to provide all functionalities to CLECs at parity with its own retail operations. In developing and implementing its OSS, Pacific has regarded the CLECs more as competitors than as wholesale customers. While Pacific recently deployed new OSS interfaces, staff and parties have not had an opportunity to evaluate the new OSS.

In the area of collocation, Pacific has denied competitors physical collocation in a number of its offices, due to a reported lack of space. While Pacific has made efforts to find collocation space, CLECs are unable to obtain collocation spaces in key central offices in the state.

[1] Pacific Bell and Pacific Bell Communications (hereinafter referred to collectively as Pacific) on their own behalf and behalf of their subsidiaries and affiliates.

Staff's initial report hereby identifies specific issues that will be addressed during the Collaborative Workshops which will begin later this month, as directed in the June 26th Ruling. In accordance with the June 26th Ruling, Following the collaborative workshops, staff will draft a Final Staff Report that will enumerate compliance solutions, implementation goals, and potential sanctions in the event of non-compliance.

## B. PROCEDURAL BACKGROUND

On March 31, 1998, Pacific filed its draft 271 application with this Commission in response to a Joint Managing Commissioner's and Administrative Law Judge's (ALJ) February 20, 1998, Ruling. The February 20th Ruling directed Pacific to file a draft application at the California Public Utilities Commission (Commission) at least 90 days in advance of filing at the FCC. The purpose of the advance filing was to ensure that this Commission would have adequate time to review and evaluate the application.

Subsequent to Pacific's filing, staff held formal weekly meetings with Pacific, CLECs, and other interested parties to clarify issues in the filings. Because of the size and complexity of the record, the Managing Commissioner and assigned ALJ issued a ruling on May 20, 1998, revising the process and altering the procedural schedule. Under the new schedule, staff was directed to prepare a staff report to be released for comment. The report, and parties' comments, would be used by the assigned ALJ to draft a proposed decision for the Commission's consideration.

On May 27, 1998, shortly after the May 20th Ruling was issued, Pacific filed a motion seeking to further revise the procedure for addressing its draft application. Pacific requested "a more collaborative workshop type process that will enable the staff and the parties to work through the issues." (Pacific Bell Motion, p 2.) Parties responded to Pacific's motion on June 4, 1998. On June 26, 1998, the Managing Commissioner and assigned ALJ jointly ruled on Pacific's motion to further revise the 271 procedure. The June 26th Ruling adopted a collaborative approach to processing Pacific's application. Specifically, rather than having staff issue a comprehensive report assessing its findings and evaluations, the ruling proposes a "collaborative process" in which Pacific, the CLECs, interested parties, and staff work together to develop solutions for each problem.

To this end, staff has been directed to issue an Initial Staff Report on its findings. At the end of the collaborative process, staff is directed to prepare a Final Staff Report which will be released for comments. That report is intended to outline steps that Pacific must take to correct the specific problems described in the Initial Staff Report. It will also include an implementation schedule for each item. It is anticipated that the report may include sanctions for future noncompliance to ensure that corrective measures do not

deteriorate over time.[2] The assigned ALJ is expected to use the Final Staff Report and parties' comments to prepare a decision for the Commission's consideration.

Adoption of the collaborative process was inspired, in part, by similar actions of the New York and Texas commissions. Both New York and Texas responded to 271 applications by asking the BOC to collaborate on solutions to competitive complaints of market participants. New York sponsored a series of collaborative sessions and then issued a staff report, while in Texas the Commission ordered parties to participate in a collaborative process. Both states outlined areas of non-compliance, recommended solutions, set out implementation goals, and proposed sanctions in the event of future noncompliance.

In determining compliance with the 14-point checklist, staff was constrained by the instant record per FCC guidance. In its Ameritech/ Michigan decision, the FCC mandates a "snapshot" approach for 271 applications: Applications must represent present compliance only; applications, once submitted, cannot be augmented with additional information; and promises of future compliance are considered irrelevant. (Ameritech, ¶55) The record for this proceeding therefore presents a snapshot of Pacific's 271 compliance as of the filing date, March 31, 1998.

However, staff recognizes that time does not stand still, and that much has happened since Pacific's initial filing. For example, Pacific has instituted new OSS interfaces. It has also made some policy changes, such as allowing collocation of Remote Switching Modules, and is revising its treatment of collocation. The snapshot approach mandated by the FCC does not allow inclusion into the record of evidence provided after the original filing. However, because staff will shortly be entering into a collaborative process with parties, this report attempts to reflect changes that have occurred since March 31, 1998. Staff proposes to explore the implications of those changes as part of the collaborative process.

## C. STAFF REPORT CONTENTS

The Staff Report consists of an analysis of each of the 14 checklist items, as well as analysis of two "multiple-issue" items, OSS and collocation. Each checklist item is dealt with in a similar manner: the item is identified; the issues, if any, are outlined; and staff lists the issues that will be discussed within the collaborative process. For OSS, in the hope that specific requirements will narrow the scope of issues to be discussed, staff has made further recommendations relating to baseline requirements.

[2] Joint Managing Commissioner's and Administrative Law Judge's Ruling on Pacific Bell's Motion to Further Revise the 271 Procedure, P. 9.

Along with this Introduction, the Staff Report contains a discussion of each of the following:

- requirements, issues, and recommendations for Operations Support Systems (OSS) (See Chapter II, Section A);
- requirements and issues for collocation (See Chapter II, Section B);
- requirements and issues for each checklist item from the section 271 14-point checklist (See Chapter III);
- requirements and issues for section 272 compliance (See Chapter IV, Section A);
- presence of a facilities-based competitor (See Chapter IV, Section B);
- the state of local competition (See Chapter IV, Section C).

## D. DESCRIPTION OF THE COLLABORATIVE PROCESS

### Criteria Applied for Identifying Issues

Before determining which issues to include in the collaborative process, staff thoroughly researched and analyzed the extensive record of the proceeding. To identify issues and concerns appropriate for the collaborative process, staff applied the following criteria. To be included within the collaborative process, an issue had to fit in one or more of the following categories:

- Ubiquitous. Is the issue identified as a problem by more than one CLEC? Or, if identified by only one CLEC, does it appear to have more general impact?
- Timely. Is this a continuing problem or has it been resolved? Was this a one-time occurance?
- Significant. Does the issue present a barrier to entry, does it significantly impact the ability of one or more CLECs to compete, and/or does it indicate discriminatory behavior?

In addition, certain issues which parties raised, e.g., pricing of UNEs and reciprocal compensation to CLECs with Internet Service Provider customers, were not included in the collaborative process because they are being addressed in other Commission proceedings.

Staff has not determined whether or not it would be feasible to explore performance measures, an issue being addressed in the OSS OII, in the collaborative process.

### Goal of the Collaborative Process

The goal of the collaborative process is three-fold: to develop solutions for identified problem areas, to establish implementation goals, and provide safeguards (e.g., penalties and assurance mechanisms) that will ensure that corrective measures will not deteriorate over time.

The outcome of the collaborative process will form the basis for the Final Staff Report.

## E. FEDERAL GUIDELINES CONSIDERED

The guidelines for the 271 process are codified within sections 271 and 272 of FTA96. Further guidance is provided by the FCC in its four orders addressing prior applications of BOCs for section 271 authority. Section 271 makes numerous references to sections 251 and 252 of FTA96. These sections have been addressed by the FCC in numerous orders including the First, Second and Third Report and Order on Interconnection. The DOJ has also given BOCs guidance in its reports on the four prior requests of BOCs for interLATA authority.

### Basic Guidelines

On or after the date of enactment of the FTA96, a Bell Operating Company (BOC) or its affiliate may apply to the FCC for authorization to provide interLATA services originating in any in-region State. (FTA96, 271(d)(1)) The FTA96 outlines the following general procedures for evaluation of 271 applications:

- consultative roles are created for the Department of Justice and the pertinent state commission, (271)(d)(2)(A) & (B);
- the FCC shall issue a written determination not later than 90 days after receiving an application, (271)(d)(3);
- the requested authorization must be carried out in accordance with the requirements of section 272[3], (271)(d)(3)(B);
- the requested authorization must be consistent with the public interest, convenience, and necessity, (271)(d)(3)(C).

[3] Section 272 outlines requirements for separate affiliate safeguards.

## The 14-Point Checklist

In order to gain FCC approval of its application -- and approval of the DOJ and the pertinent state commission, in their respective consultative roles -- the BOC must prove that it is providing each of the14 checklist items listed in Section 271(c)(1)(B) of the Act to competitors in a nondiscriminatory manner, and at parity with its own use.

## Role of State Commissions

FTA96 section 271 (d)(2)(B) describes the role of state commissions as follows: "Before making any determination under this subsection, the Commission shall consult with the State commission of any State that is the subject of the application in order to verify the compliance of the Bell operating company with the requirements of subsection (c)."

The FCC finds that it will consider carefully those state commission findings that are supported by a detailed and extensive record. (LA Order ¶9.) It also states "(b)ecause it is the Commission's statutory duty to determine whether the requirements of section 271 have been satisfied, the Commission is not limited to considering only the issues and facts that were presented in the state commission proceeding." The FCC stresses, however, that parties should make every effort to present their views in the state forum. (SC Order, ¶ 27.)

## General FCC Guidelines for the 271 Process

The FCC offers the following as guidelines for the 271 application process:

### *1. Burden of Proof*

The FCC states that "the BOC applicant retains at all times the ultimate burden of proof that its application satisfies section 271." (Ameritech, ¶44.)

### *2. Complete Applications*

In its Ameritech/Michigan decision, the FCC stresses that, because of the truncated time frame for 271 evaluations, a "BOC's section 271 application must be complete on the day it is filed." (¶ 50. See also SC Order ¶¶ 37, 57.)

### *3. No Paper Promises*

In its Ameritech/Michigan decision, the FCC is very clear that "paper promises" can hold no bearing on whether a BOC passes a checklist item:

"We find that a BOC's promises of future performance to address particular concerns raised by commenters have no probative value in demonstrating its present compliance with the requirements of section 271. Paper promises do not, and cannot, satisfy a BOC's burden of proof." (¶55.)[4]

***4. Obligation to Present Evidence and Arguments Clearly***

The FCC finds that BOCs bear the burden of presenting their arguments and evidence clearly and concisely, and that the significance of the evidence must be readily apparent. (¶¶ 60-61.)

## General FCC Guidelines for Evaluating Checklist Compliance

Within its 271 application orders, the FCC offers the following guidance in determining compliance with each checklist item:

***1. Available as a Practical and Legal Matter***

In its Ameritech/Michigan 271 order, the FCC provided a yardstick to use in determining what it means to "provide" a particular checklist item. The FCC concluded that a BOC provides a checklist item if it makes the item available "as a legal and practical manner." (Ameritech, **&**107)

***2. Preponderance of the Evidence***

The Act does not prescribe a particular standard of proof for establishing whether a BOC applicant has satisfied the checklist. Since the standard of proof applicable in most administrative and civil proceedings is the "preponderance of the evidence," the FCC adopted that as the appropriate standard for evaluating a BOC 271 application. (Ameritech,**&**45)

***3. Access Must Be Non-Discriminatory and Provided at Parity***

The FCC determined that the BOC is required to provide access to its competitors that is equivalent to the level of access it provides to itself, its customers, or its affiliates. The FCC construes equivalent access broadly to include comparisons of analogous functions between competing carriers and the BOC, even if the actual mechanism used to perform the function is different for competing carriers than for the BOC's operations. (Ameritech,**&**139)

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[4] The FCC finds, however, that they can and will look at past behavior in evaluating 272 (affiliate safeguards) compliance: " (W)e will look to past and present behavior of the BOC as the best indicator of whether the BOC will carry out the requested authorization in compliance with the requirements of section 272." (Ameritech/ Michigan, **&**111.)

## DOJ Guidelines for Evaluating Checklist Compliance

In its evaluation of the Ameritech/Michigan application, the DOJ found that Ameritech failed to show that the local markets in Michigan were "irreversibly opened to competition." The DOJ termed this to be its competitive standard for evaluating section 271 applications. (DOJ, Ameritech - Michigan, June 25, 1997)

# CHAPTER II: MULTIPLE-ISSUE ITEMS
# OSS and COLLOCATION

## A. OPERATIONS SUPPORT SYSTEMS (OSS)

### Summary

Of all the issues before the Commission in the section 271 proceeding, the fitness of Pacific's OSS offering generated the most comment. Most commentators strongly assert that Pacific has failed to meet it obligation to provide non-discriminatory access to its OSS. Pacific generally responds that it has met the non-discriminatory standard contained in section 271 of FTA96. Further, Pacific appears to have certain interpretations of the FTA96 and FCC orders that have greatly shaped its current offering of OSS. Specifically, Pacific apparently believes that manual interfaces can provide equivalent access to a mechanized process, that access to its proprietary systems meets the requirements of the FTA96, and that the promise of future improvements is acceptable evidence of adequate performance.

Staff's review of all parties' comments led it to determine that Pacific has not provided non-discriminatory access to its OSS. Staff is particularly concerned that its interpretations of the FCC orders denying prior section 271 applications differ substantially from Pacific's. Despite Pacific's significant investment in making OSS available to competitors, staff is of the opinion that Pacific's OSS offering needs fundamental changes to bring it into compliance with section 271 of FTA96.

Many of the recommended changes stem from differing interpretations of FCC orders. As outlined above, staff believes that:

- Pacific's OSS offerings must offer the same level of mechanization as its retail offering;
- Pacific cannot base compliance solely on its proprietary systems. Pacific must offer all functionalities through non-proprietary interfaces;
- Pacific's promises of future system improvements cannot be used in review of its application.

Staff looks forward to the opportunity of working with Pacific and other parties to develop solutions and implementation plans for the issues discussed below.

## Recommendation

Staff recommends that Pacific and other parties use the collaborative process to develop fixes to Pacific's OSS that will enable Pacific's offering to comply with Sections 251, 252 and 271. To further the discussion in the collaborative process, staff has provided several recommendations for discussion topics and basic system improvements that should be addressed as a starting point. Staff appreciates that Pacific has expended considerable effort in developing its current OSS interfaces and hopes that the collaborative process will build upon this prior work.

## FCC Rulings in Prior 271 Filings

In each of its 271 orders, the FCC discusses and clarifies what it means to provide nondiscriminatory access to OSS. In its Ameritech/Michigan 271 order, the FCC developed a framework for analyzing access to a BOC's OSS, established a broad definition for nondiscriminatory access, determined what types of evidence could be used to demonstrate nondiscriminatory access, and lastly, whether the BOC has provided access consistent with Sections 251, 252 and 271.

### *Framework for Analysis*

The FCC determined that an examination of a BOC's OSS performance was integral to its determination of whether a BOC is "providing" all of the items contained in the competitive checklist.[5] To determine OSS performance, the FCC uses a two-part inquiry. First, the Commission must determine whether the BOC has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions available to them. Second, the Commission must determine whether the OSS functions that the BOC has deployed are operationally ready, as a practical matter.[6]

Based on the facts before it in Ameritech's application, the FCC determined that a BOC must comply with the following requirements in order to satisfy the duty to provide nondiscriminatory access to operational support systems by competing carriers:

1. allow a competing carrier access to the processing of information between the interface and the legacy systems to perform a specific function in substantially the same time and manner as the ILEC performs that function for itself;[7]

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[5] FCC, In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan, **&**132

[6] **&**136.

[7] **&**135

2. deploy the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions;[8]
3. develop sufficient electronic and manual interfaces to allow competing carriers to access all of the necessary functions;[9]
4. provide equivalent access to the competing carrier for the necessary functions;
5. provide equivalent access in terms of quality, accuracy and timeliness for retail services;[10]
6. demonstrate that the access it provides offers an efficient competitor a meaningful opportunity to compete for services with no retail analogue;[11]
7. adequately assist competing carriers to understand how to implement and use all of the OSS functions available to them;[12]
8. ensure that its OSS are designed to accommodate both current demand and projected demand of competing carriers for access to OSS functions.[13]

**Evidence of Nondiscriminatory Access**

A BOC must present evidence that the above OSS functions are operationally ready, as a practical matter, to meet the nondiscriminatory access standard. The FCC finds that performance standards that have been adopted by a state commission are more persuasive evidence than standards unilaterally adopted by the BOC.[14] Commercial evidence is the most probative type of empirical evidence to prove operational readiness.[15] Also, the information provided by the BOC must be verifiable. Additionally, a BOC must possess operational evidence to demonstrate operational readiness. This evidence must show that its OSS functions provided to competing carriers are actually handling the current demand and will be able to handle reasonable foreseeable demand volumes.[16]

The BOC must demonstrate "that it has developed sufficient electronic and manual interfaces to allow competing carriers to access all of the necessary OSS functions." To demonstrate it has sufficient interfaces, the BOC must prove the following:

- The quality of the service the competitor will receive must be at parity with the BOC.

[8] **&**136
[9] **&**137
[10] **&**139
[11] **&**141
[12] **&**131
[13] **&**137
[14] **&**141
[15] **&**161
[16] **&**161

- The time required to provide resold services must be substantially the same as the amount of time for a BOC to provide analogous retail service to itself or a customer.[17]

Double-billing is compelling evidence that a BOC's OSS for ordering and provisioning for resale services is not operationally ready, and that, therefore, the BOC is not providing nondiscriminatory access to OSS functions. [18]

The BOC must demonstrate, at a minimum, that both individual and combinations of network elements can be ordered, provisioned, and billed in an efficient, accurate, and timely manner, and that its operations support systems supporting such functions are designed to accommodate both current demand and projected future demand of competing carriers.[19] A BOC must be able to process adequately an increased volume of orders in a timely fashion.[20] The amount of reliance on manual processing is important. Competitors should not be subject to manual processing more often than the BOC because this affects the timeliness of orders.[21]

The BOC must provide competing carriers with all of the information necessary to format and process their electronic requests so that these requests flow through the systems quickly and efficiently.[22] The BOC must respond to requests and have the capacity to meet the demands of competitors when requested.[23]

The FCC has devoted a considerable portion of its orders on section 271 applications discussing access for non-retail functions (e.g., unbundled loops, switching and transport). The FCC finds that nondiscriminatory access in this context exists when the BOC demonstrates that the access it provides to competing carriers provides the competitor a meaningful opportunity to compete.[24]

The FCC provided no definite criteria on proving when 'a meaningful opportunity to compete' exists. However, the FCC said, as indicated above, that specific performance standards adopted by a state commission would be more persuasive evidence of reasonableness than a standard unilaterally adopted by a BOC. As an example of evidence that competitors have a meaningful opportunity to compete, the FCC notes that customers served by UNEs may provide sufficient data to develop an appropriate measurement of equivalent access.[25]

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[17] **&&**167, 171
[18] **&**203
[19] **&**161
[20] **&**191
[21] **&&** 163,180,196,199.
[22] **&**131
[23] **&**198, 199
[24] **&**141
[25] **&**141

## Summary Competitors' Concerns

Competitors concerns were broadly grouped into ten categories:

1. Pre-Ordering Interfaces
2. Ordering
3. Maintenance and Repair
4. Billing
5. Change Management
6. Anti-Competitive Behavior
7. Local Service Center
8. OSS Appendix—Access to OSS Interfaces
9. Training
10. Testing of Interfaces

These concerns and Pacific's responses are analyzed by staff in subsequent sections in this chapter.

## 1. Pre-Ordering Interfaces

### *Competitors' Concerns*

In their comments CLECs note several significant shortcomings with Pacific's pre-ordering OSS interfaces. Key among these is CLECs' inability to integrate information from the pre-ordering process into an order.[26] Without the ability to integrate pre-ordering information, CLECs are forced to enter the same information twice, greatly increasing the chance for errors. Brooks suggests that with proper integration CLEC ordering errors would greatly diminish.[27]

Another substantial shortcoming that competitors cite is their inability to electronically access customer service records (CSRs) via Pacific's pre-ordering interfaces. Competitors claim that Pacific's retail representatives have electronic access, and that this therefore is not an equivalent offering. CLECs state that they need the CSRs to ensure that customers switching carriers are aware of all their current services and options. CSRs also help in determining customer premise equipment compatibility.

In addition to CSRs, TCG believes Pacific should be required to offer CLECs an electronic ability to inquire about and reserve due dates; to schedule appointments; to reserve facilities; to view pre-qualified loops, and; to retrieve Customer Premise

[26] Sprint p.10, MCI p. 203, Nextlink/ICG, p. 26

[27] Brooks notes that Pacific identifies in its Appendix A response five categories of errors committed by CLECs that are the major source of errors for all orders placed by CLECs. Three of those categories are directly related to obtaining pre-order information (correct address, telephone numbers and correct circuit identification). (4/30 filing, p. 8)

Equipment configuration/compatibility information. Nextlink/ICG notes that Pacific's retail representatives have access to the APTOS legacy system (Automated Pricing Terminal Operations and Service Database) in order to place inquiries for facility availability. They also state that other Pacific personnel have the ability to access the Loop Facility Assignment Control System (LFACS), a database that contains information about facilities. Both TCG and Nextlink/ICG believe it is not consistent with either FTA96 or the FCC's rules that CLECs are prevented from having access to this information.

MCI and Sprint assert that Pacific does not offer the same form of address validation to CLECs as its own retail representatives have. The CLECs believe that unlike the form of validation offered to its own representatives, CLECs are only offered the option of validating that a service address is in a range of addresses that Pacific serves. The individual address is not validated against a current customer/facility base.

***Pacific's Response***

In Pacific's May 20, 1998, response to competitors' concerns, Affiant Viveros states that Pacific introduced several new interfaces that allow CLECs to integrate pre-ordering information either by designing their own systems or by allowing use of Pacific's existing legacy system. Pacific notes that the Datagate interface allows CLECs to develop their own Electronic Data Interface (EDI) ordering interface that would allow for pre-order integration. CLECs also can use Windows based technology (e.g., third party software or cut-and-paste options) to integrate orders placed with Verigate and LEX (Local Service Request Exchange). Lastly, Pacific notes that if CLECs use Pacific's legacy systems either Starwriter or SORD (Service Order Retrieval and Distribution), some level of pre-ordering integration is available. Pacific believes these interfaces provide the CLECs with sufficient options for a CLEC to integrate pre-ordering information.

In the same filing, Pacific also indicates that electronic access to CSRs is now available through Verigate and Datagate pre-ordering interfaces. Pacific does not think it is obligated to provide electronic access to other information concerning facility availability or to allow CLECs to view information on pre-qualified loops. This is because Pacific's own representatives do not have electronic access. Pacific states that "due date availability" and "dispatch required" functions are made available equally to Pacific's retail representatives and to CLECs through Datagate and Verigate. Additionally, due dates are often negotiated for large or complex orders. Pacific claims that it does provide access to customer premise compatibility by providing switch type in the pre-ordering information available to CLECs. Pacific notes that effective June 1998 these same capabilities will apply to Plain Old Telephone Service (POTS)-like Unbundled Network Element (UNE) loop and port combinations where Pacific combines the UNEs for the CLEC.

With respect to address validation, Pacific asserts that its service representatives access the same database and receive the same type of validation. Pacific insists that it does not validate specific service addresses for its own retail operations.

### *Staff Analysis*

Staff agrees with competitors that Pacific has not provided sufficient ability to integrate pre-ordering and ordering interfaces. We believe that parties should explore what level of pre-ordering integration is equivalent to that experienced by Pacific's own retail representatives. As a minimum, staff recommends that parties consider developing one set of GUI-based interfaces (Graphical User Interface) that allow CLECs to order resold services and a GUI-based integrated interface for UNEs, either in the same interface or a separate offering,. It would be most helpful if Pacific came to the collaborative process with time and cost estimates for fully integrating Verigate to LEX. Parties could then discuss and agree upon what level of information is necessary to allow CLECs to readily build an integrated pre-order/ordering interface that permits machine-to-machine interaction. This may be achieved by improving upon the documentation for Datagate and EDI.

Although staff understands that the FTA96 and FCC's orders have established parity as a requirement for entry, staff is also aware that interfaces may exist that offer better than parity performance with a relatively small amount of incremental effort. Accordingly, staff hopes that Pacific will be willing to consider in the workshop all potential interface solutions: those that offer parity performance as well as those that offer better than parity performance, in the interest of determining the optimal interfaces.

In discussing pre-ordering integration, Pacific should be prepared to discuss in detail what system work is necessary to provide electronic access to CSRs and what level of access its own retail representatives currently have. Staff would like to explore fully the level of electronic access Pacific's retail representatives have to inquire about and reserve due dates, to schedule appointments, to reserve facilities and to retrieve CPE configuration and compatibility information. At the collaborative meetings, staff would like Pacific to explain which employees have access to APTOS and LFACS, and what the primary purpose is for these databases. Staff wishes to explore permitting CLECs access to those databases, if appropriate.

Staff believes competitors' concerns regarding address validation may best be handled through improvements to documentation on the use of pre-ordering address validation functions. This issue should also be explored in the collaborative meetings.

## **2. Ordering**

### *Background*

Pacific provides several ordering interfaces for both resale and UNEs. Starwriter, SORD, LEX, RMI (Resale Mechanized Interface) and EDI can be used by CLECs to order resold services. Starwriter is used by Pacific's own retail representatives for ordering simple residential services, and SORD is used for simple and complex business and complex residence orders. LEX provides CLECs with a graphical, user friendly ordering interface while RMI and EDI are designed for a higher volume environment where the CLEC designs its own ordering interface. For UNEs, CLECs can choose among four interfaces. The first interface introduced was Customers Enhanced System for Access Requests (CESAR), adapted from its prior use as an ordering interface for interexchange carriers. LEX is a new interface that was originally designed by Southwestern Bell Corporation and features a graphical user interface. LEX was introduced in March 1998, but carriers are only recently starting to use and/or test LEX capabilities. EDI is a machine-to-machine interface that requires substantial investment by a CLEC. Currently, no CLEC has used EDI for ordering UNEs. Finally, CLECs may use SORD to order UNEs, but it is still unclear which UNEs may be ordered through SORD. SORD became available in May 1998.

### *Competitors' Concerns*

Many competitors expressed concern about the proprietary nature of many of Pacific's interfaces (except EDI and RMI). Competitors note that proprietary interfaces require them to enter an order twice: once into Pacific's system to have the order processed, and once into their own systems so the competitor can bill and provide customer service.

Another concern (expressed by Sprint directly and also indirectly by other carriers) is the lack of up-front edit capability found in certain interfaces. In Pacific's retail systems customer representatives can only progress from one screen to the next when they have successfully completed the current order screen. This type of edit greatly reduces, and possibly eliminates, order rejection due to improper formatting or incomplete information.

According to Sprint, MCI and Nextlink/ICG, rejection notices and jeopardy notices are slow and inconsistent. These carriers note that, for orders involving UNEs, jeopardy notices [notices that Pacific will not meet the scheduled installation due date] are sent either by facsimile (fax) or by a phone call. This contrasts with resale where there is electronic notification for orders placed via RMI. Competitors assert that they were led to believe that EDI would solve the problem of not getting reject and jeopardy notices in a timely fashion. Pacific indicates that EDI does not have any greater capacity for rejection and jeopardy notification than does Pacific's other interfaces.

Competitors claim that Pacific has made it possible for only a limited number of order types to flow through. This limited flow-through rate has resulted in extensive manual processing of orders. This has raised competitors' concerns about Pacific's ability to

handle increased volumes and its ability to accurately process orders. As noted above, the FCC shared these same concerns in previous 271 filings. Specifically, the resale order interfaces currently only flow-through migration orders. Changes, moves and new connects do not flow-through. Facilities-based competitors note that only unbundled loop migrations flow-through. New connects, changes, disconnects, suspend/restore, Directory Number Call Forwarding (DNCF), and DNCF to Local Number Portability (LNP) conversions reportedly do not flow-through and CLECs are unaware of when these orders will flow-through. MCI asserts that the effect of such limited flow-through capability is readily apparent in Pacific's own statistics: MCI notes that Pacific's witness Nipps has stated that only one to two percent of orders experience flow-through.

According to MCI, Nextlink/ICG and TCG, the limited flow-through problem is exacerbated by the limited number of UNE order types Pacific's interfaces can accept in electronic format. It appears that only simple orders involving unbundled loops can currently be accepted in an electronic format. All other orders for UNEs either must be transmitted by fax or called in.

TCG claims that LEX and EDI slow the ordering process by requiring unreasonable batch processing. They would prefer to see a real-time, machine-to-machine interface.

***Pacific's Response***

Pacific responds to the complaint that many of its ordering interfaces require dual entry by saying that those interfaces were designed for CLECs which are not interested in developing their own ordering platform. Pacific believes that CLECs interested in creating their own ordering systems would likely benefit from developing EDI capability. As part of the LEX ordering interface, CLECs can request daily flat file extracts that include all Local Service Request (LSR) data created by CLEC employees. This file could be used by the CLECs to populate their own ordering and customer care systems.

Pacific responds to Sprint's desire for more front-end edits by noting that CLECs have balked at the edits that currently do exist. This is demonstrated, Pacific states, by the numerous work-arounds Pacific's Local Service Center (LSC) has agreed to implement to accommodate CLEC system limitations. Moreover, Pacific indicates that CLEC ordering interfaces were designed to support a more limited product range than Pacific's legacy systems.

According to Pacific, reject notices for resale orders are generated in three ways. For orders received via RMI, rejects are generated by RMI (without service representative intervention) if the orders do not pass basic standards of completeness and accuracy. If RMI orders pass these basic standards, then a service representative will attempt to process the order. If the order fails again, Pacific encourages its service representatives to find obvious errors. If orders are received via fax, Pacific sends back a faxed reject notification through the LSC Tracking Database (LTD). The LTD system allows for a

single reject code, but the service representative will place subsequent error codes in the remarks section of the reject notification. Pacific claims that CLECs were included in the development process for the reject code set to ensure that reject notifications are clearly understood. Pacific notes that, unfortunately, the possible combinations of CLEC errors is quite large and, therefore, it is difficult for Pacific to identify all CLEC-caused errors on an order.

Pacific responds to CLEC criticisms about low flow-through rates in two ways. First, Pacific notes that it has developed flow-through for those services that CLECs thought they would most likely order in the near term. Competitors initially indicated to Pacific that most resale orders would be for as-is migrations and most orders for UNEs would be for unbundled loops. More recently, competitors have expressed an interest in recombining UNEs to offer basic exchange service. This has resulted in a substantial decline in the percentage of orders that flow-through. Pacific has stated that it will make this capability available in July 1998 for requests submitted via LEX and EDI. Pacific asserts that it develops flow-through capability based on CLEC's demands and as time is available. Pacific contends that flow-through is determined by the CLEC's choice of order mix. Most recently, CLECs have withdrawn from the resale market, reducing the amount of migration orders Pacific receives. At the same time, CLECs with existing customer base must submit orders to satisfy customers' needs for record and feature changes. This explains the low volume of orders that flow-through.

Second, Pacific asserts that competitors have chosen to use the least efficient interface to submit orders and this has adversely affected flow-through. In Affiant Nipps opening and rebuttal affidavit, Pacific claims that flow-through occurs when two conditions are met: the order must be for basic exchange migration and the order must be error free. Nipps claims that the current low flow-through rate for resale orders reflects a shift from RMI to the fax process by CLECs because of limitations in their systems and the decision by some CLECs to exit the market. Pacific claims that 52% of the resale orders in April 1998 were sent by fax. Further, Pacific contends that it takes Pacific approximately 200% of the resources (average employee work time) to produce a fax order when compared to RMI. Pacific states that this high level of faxed orders adversely impacts processing efficiency.

Pacific decided not to develop flow-through for Interim Number Portability (INP) because it determined that flow-through capability in this area was not warranted due to low transaction volumes and limited benefits and efficiency gains to CLECs and Pacific. According to Pacific, migrations from INP to LNP will occur 30 days after LNP becomes available in a particular area, which will further reduce use of INP.

In response to TCG's concern about batch processing, Pacific explains that LEX is client server based and allows real-time access to the server. Every 15 minutes, orders are transferred to Pacific's internal systems. Further, Pacific asserts that batch processing is a common practice for EDI based interfaces.

***Staff Analysis***

In the collaborative process, staff would like Pacific to provide documentation on the current level of front-end edits that Starwriter and SORD contain. CLECs should come prepared to discuss which front-end edits they want and what types of system modifications would be necessary on their part to accommodate greater front-end edits. Staff agrees with Pacific that it serves little purpose to put in place greater front-end edits and then have CLECs ask for work arounds.

CLECs' concerns about the proprietary nature of many of Pacific's interfaces should be addressed in the workshops. Staff recommends that CLECs come with concrete suggestions of how Pacific could modify its systems to provide information that would allow for easier inclusion into the CLECs' own customer care and billing systems. Staff notes that it may be more productive to explore improving Pacific's current ordering interfaces rather than rejecting them as non-compliant with Section 271 because they are proprietary.

Staff expects a considerable portion of the discussions to focus on flow-through levels and on the availability of mechanized jeopardy/rejection notices. Staff agrees with the FCC's conclusion that a process that relies on significant manual intervention is generally inferior to an automated process. Documentation presented by the CLECs provides serious doubt about whether Pacific is able to process orders in a timely and accurate manner using a manual process. In the workshops parties should be ready to present a minimum list of services and/or elements that should flow-through. Staff encourages Pacific to present a detailed explanation of what system changes would be needed to accommodate greater flow-through. Pacific should be prepared to present in tabular format a complete list of all services and elements for which CLECs have placed orders in the last two years, which services Pacific can accept electronic orders for, and which of these services can be flowed-through. Staff concurs with MCI that an inability to accept electronic orders for UNE combinations is an impediment to CLECs using UNE combinations to enter the market. Staff thinks that any discussion of flow-through must include orders for UNEs and combinations of UNEs.

In examining ordering interfaces and their integration to pre-ordering, staff wishes to explore TCG's claims that LEX and EDI are slowed by the use of batch processing. Staff is concerned that the ordering interfaces provided to CLECs may not offer as timely a response as Pacific's own interfaces.

## 3. Maintenance and Repair

### *Background*

Pacific provides competitors with three methods to report trouble with resold services or UNEs. First, competitors may contact the Local Operations Center (LOC) where an employee will complete a trouble ticket and contact the appropriate Pacific maintenance personnel. Second, a competitor may use the Pacific Bell Service Manager (PBSM) which is an electronic interface used by both Pacific customer service representatives and large business customers for trouble reporting. Third, Pacific is willing to construct a machine-to-machine interface known as EBI (Electronic Bonding Interface) that will allow CLECs to enter trouble reports for resold services, UNEs and interconnection trunks. These systems may also allow CLECs to perform some basic automated tests.

***Competitors' Concerns***

Overall, few concerns were expressed about Pacific's maintenance and repair OSS. Those concerns, however, center around three areas. First, some competitors expressed frustration with initial service orders being completed improperly or not at all. While service orders do not normally qualify as maintenance requests, CLECs report that Pacific often referred service orders to the LOC when the problem was initial service order completion. This is especially true for unbundled loop and DNCF cut-overs. Second, facilities-based competitors (Nextlink, TCG) were concerned that they did not have electronic access to trouble histories for UNEs, or receive real-time alarms and performance reports. Third, the one competitor that has undertaken development of an EBI interface, MCI, complained of Pacific's slowness in developing the interface as well as last minute design changes by Pacific. MCI claims that it is currently just testing the interface and cannot provide comment on its functionality.

***Pacific's Response***

Trouble history on any UNE product has been available electronically via Pacific's OSS since 1996. However, Pacific does not specify which interfaces provide the information. System alerts and notifications to users are available via PBSM. In response to criticisms by AT&T and MCI about implementing EBI, Pacific responds that either the carriers have chosen not to implement the interface because 1) it is more costly for Pacific if AT&T uses the manual option, or 2) delays in implementing EBI are related to CLEC back office system problems.

***Staff Analysis***

Staff's initial impression is that Pacific has made substantial progress in providing competitors with equivalent access to its maintenance and repair systems. Staff believes, however, that concerns expressed by the facilities-based competitors should be addressed during the collaborative process. One issue staff seeks to explore is the difference

between PBSM functionality and that offered through EBI applications. Staff is concerned that small and large competitors have equivalent access to functions that allow CLECs to troubleshoot and enter trouble reports. Competitors' experience with developing EBI applications should be reviewed and parties should focus on improvements that can be drawn from these early experiences.

Staff agrees that repair orders must be completed properly and on a timely basis. If installation orders are not being completed properly, staff is interested in having those orders properly recorded as installation problems. The issue of installations being properly completed should be addressed when parties discuss the Local Operations Center (LOC). Parties should be prepared to discuss how installation reports/problems should be handled, e.g., should issues be referred to LOC, is the report format the same.

## 4. Billing

### *Background*

In its application Pacific outlines a variety of methods through which CLECs may obtain billing information. When appropriate, Pacific provides three types of billing information for both resold services and UNEs: 1) daily usage, 2) monthly recurring, and 3) nonrecurring. The data is generally available in three formats: Network Data Mover (NDM) electronic files, CD-ROM and paper. On May 11, 1998, Pacific changed its billing of resold services from the system used to bill interexchange carriers (Carrier Access Billing System or CABS) to its billing system used for its own end-users (Customer Records and Information System or CRIS). Pacific claims that it made this system switch to allow for better order process via new interfaces and to provide more billing options.

### *Competitors' Concerns*

CLECs seem to experience many different types of problems with bills generated by Pacific. However, it is unclear from both the competitors' comments and Pacific's replies whether the problems are generated by the billing mechanisms in place or by up-stream systems that feed the billing system. Sprint and Working Assets have both continued to receive bills from Pacific, even after they cancelled service for a particular end-user. Working Assets has been billed for business service yet it reports that it serves only residential customers. Genesis has had a protracted billing dispute in which discrepancies between order completion dates generated by Pacific's mechanized order interfaces conflict with dates in its billing system. MCI asserts that Pacific has not developed a

system for billing originating and terminating access on unbundled switching elements that MCI has ordered.

***Pacific's Response***

In response to Working Assets' claims of double and incorrect billings, Pacific notes that it has adjusted Working Assets' bills where appropriate. Pacific indicates that it cannot respond to many of Working Assets claims about billing errors because the CLEC did not provide specific account and Billing Telephone Number (BTN) data. The CABS to CRIS conversion will improve overall billing, according to Pacific. Pacific admits that there was a CABS system error in April 1998, in which the system double billed charges. Pacific maintains that the problem has been corrected.

In responding to Sprint's claim of improper billings for canceled orders, Pacific explains that there have been instances where Sprint sent in an LSR and then subsequently canceled the request. Pacific states that when Sprint sent the original LSR via RMI and then sent a cancellation by fax, Pacific would reject the cancellation order. Pacific does not explain why the cancellation is rejected, but it appears that the mixed use of interfaces is not acceptable to Pacific and/or Pacific cannot accommodate such use.

***Staff Analysis***

Staff's analysis of other aspects of Pacific's OSS offering indicate that systems feeding the billing process have experienced errors. It is very likely that some concerns expressed by CLECs will be addressed by improvements in Pacific's OSS. The collaborative process should explore how billing disputes are handled. Staff is troubled by the Genesis scenario because it seems to signify that Pacific cannot rely upon any single internal system to generate bills. Staff would like Pacific to clearly explain how information generated from orders, including order completion time and order rejections/cancellations are used in generating bills for CLECs.

The collaborative process should be used to identify any services for which Pacific cannot generate billing data and develop solutions, including MCI's concerns about switched access records.

## 5. Change Management

***Background***

Pacific has revised many of its OSS interfaces over time for increased performance and features. Some of these changes require the CLECs to modify their own order entry systems, some changes require CLECs to modify how order forms are completed while other changes require no changes on the CLECs' part. For some interfaces, EDI being the prime example, joint planning and development is necessary. The process of upgrading the interfaces and the joint planning and design of machine-to-machine interfaces is commonly referred to as "change management."

***Competitors' Concerns***

Sprint, MCI and AT&T believe their experiences with the May 1997 upgrade of RMI demonstrate that Pacific has a one-sided development process for new interfaces. CLECs argue that Pacific's change management process does not allow for competitors' concerns to be addressed. Sprint provided a detailed account of its experience with the May 1997 upgrade. Initially Pacific informed Sprint that it would not need to modify its systems to accommodate the planned upgrade. When the specifications for the upgrade arrived on April 25, 1997, it was apparent to Sprint that it would need to modify its own OSS. A second revision of specifications appeared shortly thereafter. On May 15, 1997 Pacific released the third set of specifications and delayed implementation until July 31, 1997. The fourth and fifth set of changes were delivered June 16 and June 30, 1997. Pacific did not put the upgrade into place until August 1997. Competitors argue that this type of experience demonstrates Pacific's willingness to use its market power to make unilateral decisions that adversely affect CLECs' ability to access Pacific's OSS.

Nextlink believes that its most recent experience with Pacific concerning the release of LEX and Verigate demonstrates that Pacific has not improved its ability to work cooperatively with CLECs. Nextlink became aware of planned new releases in approximately April 1997. In November of the same year, Pacific provided a simple matrix that listed hardware and software requirements without any explanation or additional technical specifications. In March 1998, Pacific provided a revised matrix to Nextlink that did not provide any additional detail. Only after signing an amendment to its interconnection agreement in April 1998 did Nextlink receive substantially more documentation.

As stated above, these experiences have reportedly made CLECs concerned that Pacific is not willing to work in a cooperative manner to manage changes to its interfaces. The CLECs also suggest that this fluid environment makes it difficult, if not impossible, for CLECs to design and manage their retail operations.

AT&T, MCI and Sprint report similar experiences in their negotiations with Pacific about developing EDI. The three carriers found Pacific unwilling to provide technical specifications on agreed upon dates. Further, once the specifications were received, Pacific often changed them. As an example, Sprint claims that it was not until eight

months after a mutually agreed upon date that Pacific provided documentation that Sprint needed to evaluate, develop and implement its portion of an EDI interface.

MCI details many similar experiences with changes to Pacific's RMI interface. As a response to the unilateral process Pacific used when it modified interfaces, MCI proposes a five step change management process: (1) Notification and Analysis; (2) Negotiation; (3) Design; (3) Construction; (4) Access Testing; and (5) Deployment. This proposed change management process would also include training and adequate documentation. (MCI, April 30, 1998, filing, p. 181)

### *Pacific's Response*

In response to the CLECs' assertions that Pacific is unwilling to agree to reasonable change control procedures, Pacific responds that it has agreed to work with CLECS to develop change control processes. Pacific notes that a draft was presented on April 23, 1998, in the last workshop held in the OSS OII (Order Instituting Investigation).

Responding to concerns expressed by AT&T, MCI and Sprint about the slow exchange of information regarding EDI, Pacific explains that it had three weeks of daily meetings on EDI business rules in September 1997. Final EDI system requirements were distributed on December 1, 1997. Pacific does not respond to Sprint's or MCI's allegations.

### *Staff Analysis*

As Pacific notes in its April 20 filing, change management is being addressed in the OSS OII. Staff appreciates that parties are diligently working in that proceeding and encourages further work. However, it is staff's opinion that the process Pacific has used in the past and is currently using to manage changes to its interfaces is not adequate. The examples provided by CLECs have impressed upon staff the need for better change management policies, and those polices must be in place prior to Pacific instituting any changes agreed upon in this collaborative process. Staff encourages parties to come prepared to design a change management process that will allow for a timely and efficient implementation of changes to Pacific's OSS. Parties should also address how this change management process will impact work in the OSS OII. As a basis for discussion, staff recommends focusing on the most recent developments on change management that have resulted from informal meetings between parties in the OSS OII.

## **6. Anti-Competitive Behavior**

### *Background*

As a part of its evaluation of Pacific's OSS, staff examined the issue of how Pacific's representatives use special knowledge gained as a result of the company's position as a wholesaler of telecommunication services and a supplier of UNEs. Pacific stated that its retail employees have no access to competitive information that CLECs provide to Pacific when they place orders or maintenance requests.

### *Competitors' Concerns*

TRA and Working Assets present several examples of marketing practices by Pacific representatives that suggest Pacific may be improperly using CLEC information to solicit customers to switch back to Pacific. In the examples, TRA and Working Assets document marketing activity that cannot be used to definitively prove illegal use of Customer Proprietary Network Information (CPNI), but are very unlikely to occur without the use of such information. Working Assets describes scenarios in which Pacific contacts customers during the interval from when Working Assets submits a resale order for the customer and the time the order is processed.

Both Working Assets and Genesis provide examples of three-way calls involving Pacific, a CLEC, and a CLEC's customer in which Pacific representatives either disparage the CLEC's service or offered Pacific's service, often on a more timely basis, if the customer would return to Pacific.

### *Pacific's Response*

In the affidavits' of Nipps, Viveros and Liberman, Pacific indicates that it has carefully trained its employees in the LSC and LOC regarding conduct with CLECs and CLECs' customers. Pacific asserts that it follows all relevant rules and regulations regarding the use of CPNI[28]. Its win-back campaigns are reportedly conducted without access to any knowledge the LSC may have about competitors' actions[29].

### *Staff Analysis*

While the evidence that Working Assets and TRA present is somewhat ambiguous, staff is sufficiently persuaded that CPNI may be improperly being used by Pacific. Staff understands that Pacific will, as a matter of normal business, conduct marketing campaigns to persuade customers to either maintain Pacific's service or to switch back. These campaigns are not inappropriate. Staff's concerns are focused, however, on the fact that solicitations are occurring just after a customer has chosen to switch carriers. It seems improbable that these solicitations were mere coincidence. During the collaborative

[28] In a June 15, 1998, letter to Andrew Isar and Michael Sawyer, Pacific asserts that its wholesale account teams are devoted exclusively to CLECs and are structured to be kept out of retail operations.
[29] Ibid., Pacific asserts that its win-back methods and practices are implemented to assure that it is complying with all applicable rules.

process, staff would like Pacific to present how it keeps CPNI of CLEC customers confidential and generally how Pacific develops its marketing campaigns for win-backs.

Competitors' concerns about inappropriate behavior on three-way calls involving Pacific representative also merit investigation in the collaborative meetings. Pacific's employees that deal with CLECs and CLECs' customers have conflicting incentives: On one hand, these employees are dedicated to helping CLECs solve their problems; while on the other hand, these same employees may feel that their employer is likely to prefer competition to not flourish. Staff is concerned that Pacific's senior management may not be structuring employee conduct rules and compensation packages to remove the conflicting incentives. As a starting point for discussions, Staff would like Pacific to present its rules or directives for employee conduct and its compensation packages.

## 7. Local Service Center (LSC)

### *Background*

In developing its OSS interfaces for CLEC use during 1996, Pacific dedicated a group of employees to process CLEC orders for resold services, UNEs and interconnection trunks. These employees had the additional responsibility of answering CLEC questions regarding the use of interfaces and completion of orders. Pacific refers to this group as the Local Service Center (LSC). In 1997 Pacific divided the LSC into two separate groups. The RLSC handles questions and orders for resold services, and the FLSC primarily focuses on CLEC's UNE and interconnection related orders. Because these groups are one of the main points of contact for CLECs, both for order processing and for interface information, it is important to examine interactions between LSC staff and CLECs.

### *Competitors' Concerns*

In their filings, competitors (specifically, AT&T, MCI, Sprint, TRA) provide insights into early experiences with Pacific's LSC. The CLECs believe that these early experiences clearly demonstrate that Pacific has struggled with the conflicting internal roles of its employees within the LSC and with providing consistent and timely answers to basic questions about ordering resold services. As discussed above, the LSC is also used to process all orders that require manual processing. CLECs' early experiences throughout much of 1996 and 1997 indicate that Pacific's LSC was unable to process order volumes submitted by CLECs in a timely manner.

Recent reported experiences of three CLECs (i.e. Sprint, Working Assets, and MediaOne) raise serious doubts about any LSC improvements claimed in Pacific's filing. On March 30, 1998, Sprint asserts that Pacific requested it use a new form to order number referral

service. Since the change, Sprint has experienced a 20% reject rate. Likewise, in a four-day study period in April 1998, Sprint found 7 of 39 (or 18%) of the service orders for new installations of resale service required escalation at Pacific because there was no dial tone at the Network Interface Device on the day after the due date. Sprint indicates that it did not receive jeopardy notices on these orders.

Working Assets has made extensive use of the escalation process to achieve order completions. In August and September 1997, Working Assets began escalating about 50% of its orders. It reportedly took over one month for the LSC to respond, and two months for senior management within Pacific to respond to Working Assets' request for help.

A more recent experience of Working Assets suggests that this past experience may not have improved. In Attachment 8 of its filing, Working Assets presents data showing that more than 50% of the Firm Order Confirmations (FOCs) are not returned by Pacific within 24 hours. This is particularly significant because Working Assets submits all its orders manually, and therefore, all its orders must by processed by the LSC. The example is also important because it reveals that the aggregate numbers in Pacific's performance measures submitted with its filing may mask uneven performance within a measure. As an example, for the month of February 1998, Working Assets reports that 46% of its FOCs were returned within 24 hours and 68% within three days. In contrast, Pacific reports, with all carriers aggregated together, that 95% of the FOCs were returned within 24 hours.

Another recent example occurred when MediaOne initiated its operations in April 1998. MediaOne explains its process of obtaining help in completing its first orders using the CESAR interface. Based on MediaOne's account, there are many different avenues for help but little coordination exists across the different departments at the LSC. In addition, it appears that MediaOne's account manager was unaware of where to direct MediaOne's information request or of the underlying basic ordering process. As another example of its extensive problems in learning to use Pacific's OSS interfaces, MediaOne notes that four fields were added to the electronic order form since MediaOne attended training last fall. MediaOne asserts that is has not received any notice or explanation about the change.

### *Pacific's Response*

In response to the allegation that end users were losing dial tone when migrating carriers or were receiving no dial tone on the due date for new resale installations, Pacific admits it did have problems early on. Pacific used special instructions on migration service orders to greatly reduce the problem. According to Pacific, allegations that it does not provide dial tone on new installations is overstated. Further, Pacific notes that when compared to retail, there are fewer incidents of installation problems.

Working Assets' escalation problems were handled by a Pacific-initiated meeting on October 30, 1997. At that meeting Working Assets provided an additional list of

escalated orders; Pacific resolved those by November 4, 1997. Pacific asserts that Working Assets has not raised any new issues to the RLSC or to its account manager.

In response to MediaOne's concerns about poorly trained LSC staff, Pacific explains that it has an "extensive" training program for LSC representatives servicing both resale and facilities-based orders. Pacific asserts that the training of LSC representatives is similar to that provided retail representatives.

### *Staff Analysis*

Competitors' comments indicate to staff that despite improvements in LSC employee training, staffing and management, Pacific has not demonstrated that the LSC can provide timely, accurate processing of competitors' orders and questions. From Pacific's and CLECs' comments, staff is unable to pinpoint exactly where the LSC needs improvement. Staff can identify general areas in which LSC performance needs improvement and suggests that parties focus discussion on areas needing improvement. Staff would like Pacific to present descriptions of the internal LSC organization including job duties, work flow analysis, and recent changes to improve performance. Staff believes that problems persist with help desk staffing and training; escalation procedures; manual processing of resale and UNE orders; issuance of jeopardy and rejection notices; and interaction between LSC personnel and account managers. Staff has concerns about conflicting incentives for employees of the LSC. Staff further requests that Pacific provide the rules, incentives and compensation established by senior management for LSC employees at all levels and for account managers.

## 8. OSS Appendix

### *Background*

When Pacific offered its new OSS interfaces to competitors in March, April, and May of 1998, Pacific decided that competitors would need to amend their interconnection agreements to reflect access to these new OSS interfaces. The process by which Pacific negotiated these appendices, and the terms and conditions contained in them provide valuable insight into what Pacific considers to be nondiscriminatory access. It also provides insight into Pacific's treatment of competitors.

### *Competitors' Concerns*

Next to flow-through, the OSS Appendix is probably the single most-discussed issue in competitors' filings. Almost all commenters believe that Pacific coerced signing of the OSS Appendix by requiring signature before Pacific would give access, training, or specifications on the new OSS interfaces. Nextlink stated that Pacific would not allow Nextlink staff to attend training on the new interfaces (scheduled two weeks later) until the company signed the Appendix.

Besides resenting being "held hostage" by the OSS Appendix, CLECs found many provisions of the OSS Appendix to be objectionable. AT&T, MCI, Nextlink/ICG and Brooks objected to the requirement that Customer Service Records (CSRs) only be accessed after a customer has agreed to switch carriers. The CLECs believe the FCC's rules on CPNI allow them to access a customer's CSR once the CLEC has obtained a letter of authorization allowing access to the CPNI. Nextlink believes that the FCC intended its CPNI rules to allow CLECs to access CSRs when in the negotiation process for a new customer.

Another controversial clause in the OSS Appendix allows Pacific to modify or discontinue use of any OSS interface upon 90 days' prior written notice. Competitors claim this clause introduces too much financial and operational uncertainty.

A third clause that CLECs object to states that the signatory agrees that Pacific provides nondiscriminatory access to its OSS interfaces. Several CLECs note that this issue is pending in this proceeding and felt that signing the OSS Appendix would be equivalent to signing away their litigation rights.

In its filing TRA describes how Pacific used its "market power" to force Omniplex to sign a resale service contract before Omniplex could use Verigate (Pacific's new pre-ordering interface). Originally Omniplex wanted to purchase wholesale services from Pacific's tariff. According to TRA, Pacific forced Omniplex to sign an interconnection agreement before it would allow Omniplex to use the new OSS interfaces. At the same time Pacific prevented Omniplex from using RMI, one of the mechanized interfaces for resale orders. TRA asserts that Omniplex was forced to agree to several clauses in the ICA which contained different terms and conditions from those that are applicable to CLECs who purchase service pursuant to Pacific's wholesale service tariff. Those terms include a requirement to pay for rebranding of resold operator and directory assistance services, a requirement to notify Pacific of disputed bills within 14 days of invoice date, and a prohibition against recourse to the Commission's complaint or other dispute resolution procedures for disputes involving less than $25,000.

### *Pacific's Response*

Responding to competitors' concerns about unreasonable preconditions placed on access to the new interfaces, Pacific notes that the FCC has defined OSS as an unbundled network element. As result of being a UNE, both the ILEC and CLECs have a duty to

negotiate in good faith on the terms and conditions of agreements. In Pacific's opinion, its proposals to amend existing interconnection agreements to include new OSS functionality are both reasonable and lawful.

Pacific responds to Omniplex's concerns about being forced to sign a resale agreement by saying that it is a requirement of Pacific's tariffs and its interconnection agreement that CLECs must sign a data exchange agreement prior to offering service. With respect to the additional requirement that carriers must dispute bills within 14 days, Pacific says that this is a correct interpretation of its interconnection agreement with Omniplex. Pacific claims that Ominplex misrepresents its inability to come before the Commission with a complaint. According to Pacific these terms were freely negotiated and Pacific cannot prevent a CLEC from initiating a complaint at the Commission.

### *Staff Analysis*

Of all the concerns competitors raised about abusive use of market power, staff finds the OSS Appendix particularly troubling. Pacific's response on this issue -- that it is required to negotiate agreements for access to OSS and that the resulting agreements were reasonable and lawful -- brings into question what the guidelines used by Pacific's negotiators were. Staff would like Pacific to present these guidelines at the collaborative process, but staff realizes that these documents may be too sensitive to reveal to parties that are currently in negotiations. Staff therefore encourages Pacific and other parties to focus on developing appropriate balances to the purported one-sided bargaining power of Pacific.

As with the sections on the LSC and Anti-Competitive Behavior, staff is concerned about employees having the correct incentives to negotiate fairly. Moreover, it is not clear what the necessity or purpose is of having phrases characterizing Pacific's OSS interfaces in an agreement that is designed to govern terms and conditions of access. When CLECs are under extreme pressure to accept Pacific's terms in order to receive specifications or training on the new interfaces, it is apparent that, when compared to Pacific, CLECs are negotiating from a position of weakness.

## 9. Training

### *Background*

In its order on the Ameritech/Michigan application, the FCC determined that, as part of its obligation to provide access to its OSS interfaces, a BOC is supposed to offer all

necessary training, documentation and material to allow CLECs to effectively use the interfaces.[30]

### *Competitors' Concerns*

Few competitors commented on specific shortcomings, but two sets of comments suggest that Pacific's training program may need improvement. Nextlink details an experience it had with Pacific regarding training. Pacific provided Nextlink with a schedule of training classes less than two weeks prior to when the training was to begin. Nextlink registered, reorganized scheduled work assignments, and paid for three employees to travel to the class only to discover that the training schedule Pacific provided contained incorrect information and the particular class on UNEs systems was not being offered and instead a resale class was being held. In addition, Nextlink notes that Pacific has a policy of requiring a minimum of five students per class and that Pacific charges for all five slots whether or not Nextlink has five students attending.

In an April 12, 1997, letter to Pacific, Working Assets outlines a training session by Pacific that seriously draws into doubt the quality of training being provided. In that session, the trainer was corrected by CLECs in attendance as well as by other Pacific attendees. It seems that a considerable amount of misinformation was provided by the trainer. In its April 30, 1998, filing, Working Assets asserts that from its recent experience, it appears that, as a result of the complexity of Pacific's OSS system as well as poor training, even managers at the LSC do not agree on how orders should be written. (London Affidavit, p. 4)

### *Pacific's Response*

Pacific does not directly respond to competitors' concerns. It does describe generally that training is available and taught with the idea that CLEC attendees could return and train their own staff. Pacific mentions that student and instructor manuals are given out at the class in both paper and electronic format. In its original filing, Pacific includes an appendix detailing the different types of training CLECs have received. Pacific notes that training is available to any CLEC that has negotiated OSS in its agreement.

### *Staff Analysis*

Staff commends Pacific for attempting to provide extensive training on the various interfaces and agrees with Pacific that it is reasonable to charge for training. However,

[30] Ameritech, **&**138.

staff notes that Pacific may have limitations in place that prevent small carriers from participating in training because of minimum class sizes.

Working Assets' comments raise further concern that the quality of the training may be inconsistent. Other carriers have raised concerns that help desk representatives have not received sufficient training to provide timely and accurate responses. This, combined with Working Assets experience, indicates to staff that Pacific needs to improve its training of employees that have direct contact with CLECs. Staff recommends that parties explore the different types of contact that occur between CLECs and Pacific's employees, what level of knowledge is required for each type of contact and how to develop an appropriate knowledge base to make those contacts meaningful. After these discussions, Pacific can draft a training program for staff's review and comments. This proposal is not intended to be the only solution available and staff will gladly entertain other proposals during the collaborative process.

## 10. Testing of Interfaces

### *Background*

As mentioned earlier, the FCC expects Pacific to demonstrate the adequacy of its OSS interfaces through actual commercial usage. If such data is not available, Pacific may substitute the results of an independent third party analysis of Pacific's OSS interfaces. Prior to submitting its application, Pacific hired Coopers and Lybrand to undertake such an analysis. As AT&T notes in its filing, the FCC has emphasized that "third-party reviews should encompass the entire obligation of the incumbent LEC to provide nondiscriminatory access, and, where applicable, should consider the ability of actual competing carriers in the market to conduct business utilizing the incumbent's OSS access."[31] The results are contained in Pacific's draft application.

### *Competitors Concerns*

AT&T, MCI and Sprint provide substantial critiques of Pacific's tests of its OSS systems. In their comments, competitors raise concerns that the Cooper and Lybrand study does not comport with FCC standards for useful third-party OSS evaluations. Competitors question whether the study was conducted with sufficient independence, the study does not properly analyze the design and construction of Pacific's OSS, the study failed to

[31] Ameritech Michigan Application, PP. 216

examine key OSS functions and the study did not accurately assess the capacity of Pacific's ordering interfaces. Competitors also note that the test was structured and conducted to determine how many of the transaction types that were supposed to flow-through its interfaces and systems would flow-through its interfaces and systems. Lastly, the commentors question results that substantiate Pacific's ability to adequately process manual orders at the LSC.

***Pacific's Response***

Pacific's response, prepared by Coopers and Lybrand, indicates that CLECs' comments were either erroneous or not appropriate. Pacific defends the study's objectivity and asserts that CLECs comments about scope were erroneous because Pacific did not need to study those areas to demonstrate its capacity. Other CLECs' comments raised tangential issues to the study that are not related to the methodology, according to Pacific. In sum, Pacific's comments attempt to refute all the concerns raised by CLECs.

***Staff Analysis***

It is clear to staff that parties would benefit by discussing an appropriate testing methodology that Pacific may use in lieu of actual commercial usage. Staff rejects the position of some CLECs that only data from actual commercial usage may be used to demonstrate the fitness of various OSS interfaces. Staff believes that Pacific and CLECs should be able to determine appropriate testing methodology for conducting independent tests of Pacific's OSS interfaces. Staff's opinion is that any testing methodology developed should include tests for all orders types that an interface is designed to accommodate.

## B. COLLOCATION

Has Pacific provided collocation in accordance with the requirements of Section 251(c)(6), and pursuant to 271(c)(2)(B)(i) and 271(c)(2)(B)(ii)?

Pacific has not demonstrated that its current process for implementing physical and virtual collocation is in compliance with the Act.

**FCC Rulings in Prior 271 Filings**

In its Bell South/South Carolina 271 order, the FCC concluded that Bell South had not demonstrated that it could make available, as a legal and practical matter, access to UNEs in a manner that allows carriers to combine them.[32] Bell South had not demonstrated that it could provide access to elements through the single method identified by the FCC for such access, collocation. The FCC underscored the essential nature of collocation in demonstrating compliance with both Checklist Items One (interconnection) and Two (UNEs).

The FCC also expressed concern that Bell South's Statement of Generally Available Terms (SGAT) did not commit the company to any particular time-frame for implementing requests for collocation, and stated that since collocation seemed to be critical to combining unbundled network elements, unreasonable delays in provisioning collocation space would create a formidable entry barrier.[33] While the FCC did not rule on what would constitute a reasonable timeframe for implementing collocation arrangements, it did express concern with the company's failure to demonstrate that it was offering collocation in a timely manner; in fact, record evidence indicated that it was not.

The FCC further found that Bell South had failed to demonstrate that it could deliver, in a timely fashion, unbundled network elements to collocation spaces for combining. The FCC stressed that Bell South had not made a showing that there was actual commercial usage of physical collocation anywhere in its region for the purpose of recombining unbundled network elements.[34]

**History**

Pacific reported that it has constructed and turned over 280 collocation cages to CLECs as of February 1998, with 143 additional cages under construction.[35] However, CLECs have been denied physical collection in some key offices due to a lack of space.

On January 30, 1998, Pacific sent a letter to all CLECs listing 59 central offices with no space available. Pacific later reassessed the central offices previously determined to have no space available, and found that it could create additional space in 51 previously exhausted central offices. Pacific sent a letter to CLECs on April 24, 1998, announcing the availability of collocation space and establishing a lottery process for CLECs to obtain space. CLECs objected to the lottery process as contrary to Pacific's tariff (which requires that physical collocation be on a "first come, first served" basis). Staff subsequently intervened and worked with the parties to establish a first come, first served

[32] FCC, In the Matter of Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to provide In-Region, InterLATA Services in South Carolina, **&** 182.
[33] **&**202.
[34] **&** 205.
[35] Curtis L. Hopfinger affidavit, March 31, 1998 filing, **&**46.

process, based on CLEC's original requests to collocate at particular central offices. That process is currently being implemented by Pacific.

In April 1998 Pacific provided staff with floor plans of central offices where Pacific had determined that floor space is exhausted.

Along with being denied space, CLECs raised these additional collocation concerns:

- Pacific's prohibition on collocation of Remote Switching Modules (RSMs);
- Pacific's lateness in installing collocation cages;
- prices for collocation;
- not being offered adequate alternatives to physical collocation;
- Pacific's policies of reserving space for itself or its affiliates;
- slowness in negotiating virtual collocation;
- inadequate detail on quotes for virtual collocation.

**Discussion of Issues**

As indicated in the FCC directives outlined above, Pacific must prove that it provides collocation space to competitors in an expeditious and nondiscriminatory manner. In order to comply with Section 251 (c)(6), Pacific must demonstrate to the CPUC that space is not available for physical collocation; providing floor plans is only one element of that process and cannot be construed to constitute Commission concurrence that space is validly unavailable. Nor has the Commission ruled on Pacific's policy of reserving space for two years for future needs. In fact, Pacific's interconnection agreements with AT&T and MCI allow for reservation of space for specific uses for periods up to one year.[36] At the same time, Pacific points to cases where CLECs have requested collocation cages, but have not utilized the space. Staff believes that "stockpiling" by CLECs of collocation spaces also has an adverse impact on other CLECs with immediate need for the space.

Pacific makes no showing of actual commercial usage of physical collocation to recombine network elements, as the FCC required in its Bell South/South Carolina order. Information filed in the 271 proceeding indicates that only one company, MCI, is currently using collocation to combine network elements as a test. MCI is not yet offering retail service based on the combined UNEs so this option is not yet commercially available from MCI. Therefore, Pacific cannot demonstrate that its physical collocation is being used for the combining of UNEs on a commercial basis.

Pacific made unilateral changes to its collocation policies following the filing of its draft 271 application. Many of the changes instituted (e.g., re-surveying offices with an outcome of finding additional space for collocation) are positive. However, staff believes

[36] Interconnection agreement between Pacific Bell and AT&T, December 19, 1996, Attachment 10, ' 3.2.4 and interconnection agreement between Pacific Bell and MCI, February 3, 1997, '2.5.

the process used for implementing both virtual and physical collocation cannot be a moving target and must be clear and nondiscriminatory.

In its May 20, 1998, rebuttal filing, Pacific indicated that it was "making every effort" to deliver all past due cages by May 31, 1998.[37] The fact that some cage installations were, or are, past due supports CLECs' contentions that installations are not always timely. Staff believes that CLECs must be able to rely on due dates of future installations, especially since delays in cage installation can lead to additional expenses for CLECs. Northpoint indicated it had to pay for DS-3s which it ordered based on Pacific's collocation due date. However, since Pacific did not meet its due date for installing the cage, Northpoint could not use the DS-3s until the collocation was completed.

Pacific is about to begin its own deployment of DSL technology, in direct competition with several CLECs. Staff believes that the allocation of space for Pacific's own DSL equipment must be on a basis that does not favor the company over its competitors.

Hopfinger's Rebuttal Affidavit, Schedule 5, includes a copy of the "Customer Collocation Technical Publication" (Publication). Staff recognizes the benefits of this document; however, some of the provisions are internally inconsistent, or appear to conflict with the way Pacific actually applies its collocation rules. For example, the Virtual Collocation section discusses "collocator-provided equipment." However, Pacific has refused to allow MCI to provide equipment used in a virtual collocation setting. As a second example, the Co-Carrier Equipment Cross Connect or Cage to Cage section contains contradictory statements on whether collocators can interconnect with each other's collocated facilities directly, or if connections can only be done between cages licensed to the same collocator.

In addition, the Publication states that shared space collocation is only available in central offices which do not have conventional cages installed. Staff recommends examining this option for offices which have cages, but where demand for future cages may outstrip available space. Also, while the Publication indicates that Remote Switching Modules (RSMs) may be collocated, Brooks indicated that Pacific allowed them to collocate Subscriber Loop Carriers (SLCs) but would not allow collocation of RSMs. (It appears that Pacific recently changed its policy regarding collocation of RSMs because, in June 1998, after final comments were filed in this proceeding, Pacific filed amendments to its interconnection agreements with AT&T and Brooks, agreeing to the collocation of RSMs.)

## Issues Selected for the Collaborative Process

Staff recommends that in the collaborative process participants should examine the following issues:

[37] Curtis L. Hopfinger affidavit, **&**44.

- A policy needs to be established for reservation of space in central offices.
- Pacific's rules for implementation of physical and virtual collocation are unclear and have undergone unilateral changes in recent months. The process should be clarified and made nondiscriminatory in all aspects.
- A process needs to be developed for Pacific to prove and the Commission to evaluate that space is not available for physical collocation in a particular central office.
- Pacific must prove that collocation is being used to combine UNEs for the commercial offering of service. Pacific must prove that competitors are able to use the platform to provide service.
- Pacific must also prove that competitors are able to use all methods it proposes to access and combine UNEs ordered from Pacific, since only physical collocation has been implemented to date.
- A nondiscriminatory policy should be adopted for the collocation of RSMs.
- Timetables must be set for implementation of physical and virtual collocation.

**Issues Deferred to Other Proceedings**

Pricing of collocation should be addressed in the Commission's generic costing proceeding rather than in the context of Pacific's 271 filing.

# CHAPTER III: SECTION 271 CHECKLIST ITEMS

## A. ITEM ONE – Interconnection

Has Pacific provided interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1), and pursuant to section 271(c)(2)(B)(i)? These requirements provide for interconnection in a non-discriminatory manner that:

1. meets the same technical and service standards that Pacific provides itself and its affiliates;
2. allows interconnection at any technically feasible point;
3. offers terms and conditions that are just, reasonable and cost-based.

Pacific has not demonstrated that it provides interconnection in accordance with the above requirements.

**FCC Rulings in Prior 271 Proceedings**

The FCC provides guidance on this checklist item in its Ameritech/Michigan Order. The burden of proof with respect to interconnection (as with all other checklist items) rests upon the BOC. The BOC must provide evidence that the quality of interconnection it provides to other carriers is equal to that it provides to itself, and also that interconnection is provided on a nondiscriminatory basis.[38]

The FCC finds that the BOC has an obligation to ensure that a competitor has sufficient information about its network to remedy network blockages that affect customers of both the BOC and the CLEC.[39] At the same time, the FCC pointed to the need for competitors to provide the BOC with improved traffic forecasts to help reduce trunk blocking rates.[40]

**Discussion of Issues**

According to Pacific, it has provisioned approximately 122,000 interconnection trunks for CLECs in California and is providing interconnection to at least 14 facilities-based competitors. Although Pacific does provide interconnection services and elements to CLECs, this proceeding's record indicates that Pacific has experienced significant problems in providing interconnection.

In the record, CLECs document the following interconnection problems:

- provisioning of interconnection trunks by Pacific is not timely;
- loading of CLEC's newly activated NXX codes into Pacific's switches is not timely or accurate;
- lack of clear and consistent guidelines for determining if CLECs' requests for interconnection services and elements are required under the Act, and if required, the establishment of clear and consistent guidelines for use of bona fide request processes;
- lack of network traffic studies or information for the purposes of planning, forecasting and mitigating trunk blockage, and;
- Pacific's refusal to execute interconnection agreements with paging companies under Section 252 (i) of the Act.

Interconnection trunks must be provided in a timely and consistent manner for CLECs to have a meaningful opportunity to compete. A number of CLECs have asserted that

[38] FCC, In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan, **&** 224 and 251.
[39] **&** 246
[40] **&** 242.

Pacific does not provide interconnection trunks in a timely manner,[41] which can have a negative impact on CLECs' ability to serve their customers. CLECs provided correspondence that highlights problems experienced in requesting interconnection trunks, delays in provisioning, and problems with notification and escalation. While Pacific claims to have alleviated its backlog of PacWest's orders for interconnection trunks,[42] there is no process in place to ensure that, as competitive pressure increases, a backlog will not reoccur. Staff recommends that the trunk provisioning issue be addressed in the collaborative process.

ICG reports that Pacific had run out of ports at the tandem where ICG wanted to install additional trunks, forcing ICG to order end office trunking (a much more expensive option).[43] Staff believes that, in general, if CLECs provide adequate forecasts, Pacific should be able to plan to accommodate CLEC's anticipated interconnection needs.

CLECs have asserted that Pacific has not activated CLEC's NXX codes in its switches in a manner that is timely or accurate.[44] CLECs complain that customers of both CLECs and Pacific cannot complete calls to these NXX codes. CLECs assert that this process causes additional cost burdens as they do not possess that ability to test NXX activations through their own networks and must send employees to particular areas to make test calls, or rely on customer complaints about uncompleted calls from particular areas. CLECs have escalated these complaints to Pacific management and to the FCC, but with no permanent resolution. Pacific performed an audit of all MCI's NXX codes in September 1997 after MCI filed a complaint with the FCC. Pacific reported to MCI that all of its codes had been activated. Pacific states that there have been a few isolated occurrences of NXX loading problems since that time, which affected all carriers, including Pacific.[45]

However, staff finds that Pacific has not introduced a process whereby NXX code activations are programmed, tested, audited and reported in a manner that is timely and nondiscriminatory for all CLECs. Further, Pacific provides no evidence that the process used to activate NXX codes for CLECs is at parity with Pacific's own code opening experiences. Staff recommends that the procedures for activation of CLEC NXX codes be addressed in the collaborative process.

CLECs assert that requests for certain services and elements, made pursuant to interconnection agreements, are not being handled in a consistent and timely manner. It is not clear from the record whether the mechanisms in place are effective and efficient in resolving interconnection request disputes. Items that CLECs report difficulty in obtaining include: Frame Relay Network to Network Interconnection, multiple points of interconnection (POIs) at tandems for network redundancies, ratcheting of trunk facilities, independent trunk testing and verification, and access specifications for Pacific facilities in

[41] PacWest Response 3/31/98, and Cox Reply 4/30/98.
[42] Pacific Bell, April 30, 1998, p. 19.
[43] ICG Response 3/31/98.
[44] MCI and TCG, 4/30/98 Replies.
[45] Pacific Bell, April 30, 1998, filing, p. 48.

order to expedite the design and implementation of interconnection services. Pacific responds that it is not required under the Act to provide those services.[46] Staff makes no judgment on the individual service requests, but rather finds that Pacific should have in place an expeditious and nondiscriminatory process for determining if individual services or elements are required to be provided under the Act. Staff recommends that the development of such a process be addressed in the collaborative process.

In an allied issue, Pacific points to its INER (Interconnection Network Element Request) as the process available to CLECs for requesting interconnection services and elements CLECs are entitled to under the Act but which are not covered in their ICAs. The record does not provide evidence on how often the INER process has been employed and the outcome of each request. Staff recommend reviewing the INER process in the collaborative process.

Several CLECs, including MCI and PacWest, assert that appropriate information regarding trunk blockage, call completion and other forms of network traffic studies or measurement are not being made available by Pacific. Pacific responds that it is not technically feasible to provide this data.[47] It is not clear from the record why it is not technically feasible to provide this information. It seems logical that Pacific needs equivalent information to study its own traffic patterns for network planning purposes as well as to mitigate blockage problems in its own network. Pacific should, therefore, be able to provide similar reports and/or data to CLECs. Staff recommends that the technical feasibility of providing network traffic information be addressed in the collaborative process.

Pacific alleges that forecasts provided by CLECs are inadequate and, as a result, provisioning problems have occurred. Pacific states that in some cases, timing and provisioning problems are a result of CLECs under-utilizing trunk capacity, causing a shortage in space and forcing some CLECs to wait for new facilities to be built. Staff recognizes that the requirements for CLEC forecasts are set out in the CLEC Handbook, (i.e., Chapter 18.0) and they appear to be very detailed. It is unclear, however, why, if forecasts are made in accordance with the these requirements, both Pacific and CLECs are experiencing timing problems in the provisioning of interconnection trunks. Staff recommends that the requirements for CLEC forecasting and Pacific's internal procedures for utilization of those forecasts be addressed in the collaborative process.

Finally, the coalition of Cook Telecom, Inc., et. al. asserted that Pacific refused requests from paging companies to execute interconnection agreements with the same terms as Pacific's agreement with Cook, pursuant to Section 252 (i) of the Act. The paging companies are requesting the agreement for Cook Paging which includes a desired reciprocal compensation arrangement.[48] Pacific says that it has denied the agreement to similarly situated carriers on the grounds that factual circumstances have changed since the

[46] Pacific Bell, May 20, 1998, p. 39.
[47] Deere Rebuttal Affidavit, May 20, 1998, **&** 11.
[48] D.98-03-075 which approved the Cook arbitration agreement, and Cook Reply, 4/30/98.

agreement was negotiated. Staff recommends that this issue be addressed in the collaborative process in order to address the specific reasons why Pacific is refusing requests under section 252(i) of the Act.

**Issues Selected for the Collaborative Process**

Staff recommends that, in the collaborative process, participants should:

- review requirements for timely provisioning of interconnection trunks including notification and escalation procedures;
- develop procedures for activation of CLEC NXX codes in Pacific's switches and a method to verify compliance;
- develop expeditious and nondiscriminatory process for determining which services or elements are required to be provided under the Act but are not covered by a particular ICA;
- develop requirements for clear and consistent INER process and determine how CLECs can effectively use the INER process.
- determine the feasibility of providing network traffic information to CLECs
- review Pacific's reasons for refusing paging companies' requests under section 252( i ).

## B. ITEM TWO – Unbundled Network Elements

Has Pacific provided nondiscriminatory access to Unbundled Network Elements (UNEs) in accordance with the requirements of Section 251(c)(2) and 252(d)(1), pursuant to 271(c)(2)(B)(ii), and applicable rules promulgated by the FCC?

Based on the issues outlined below, staff finds that Pacific has not met this checklist requirement.

**FCC Rulings in Prior 271 Filings**

In its Ameritech/Michigan order, the FCC determined that Section 251(c)(3) does not require a new entrant to construct local exchange facilities before it can use UNEs to provide a service. The FCC also said that the ILEC need not separate network elements

that the ILEC currently combines.[49] In Iowa Utilities Board vs. FCC, the Eighth Circuit initially upheld the prohibition on ILEC separation of network elements. The Court later later reversed itself,[50] but left in place the requirement that a competitor not be required to construct network facilities in order to access UNEs to provide a telecommunications service.

The FCC also reported that Ameritech was involved in a series of carrier-to-carrier tests of its OSS functions for the ordering, provisioning and billing of combinations of unbundled network elements. The FCC stated that, in future applications, it expected Ameritech to present the results of OSS tests and demonstrate that new entrants are able to combine network elements to provide telecommunications services, as required by the Act. Because it saw the use of combinations as an important entry strategy, the FCC said that, in any future 271 application, it would carefully examine OSS issues relating to UNE combinations.[51]

In its Bell South/South Carolina order, the FCC found that entry would be hindered by Bell South's failure to offer UNEs in a manner that allows CLECs to combine them. The FCC further stated that the industry is in the process of reviewing various methods of combining elements.[52] Pursuant to the provisions of Bell South's SGAT, a competitor must use collocation to combine network elements. The FCC further determined that Bell South had not demonstrated that it could provide collocation for combining UNEs in a timely fashion.[53]

In the Bell South/South Carolina order, the FCC does not address the question of whether or not Bell South's proposed method of combining elements via collocation would be consistent with the Act or whether other methods of recombining must be offered. The FCC cited the Eighth Circuit ruling that a carrier could achieve the capability of providing services completely through access to the UNEs in an ILEC's network. The court concluded that a CLEC is not required to own or control any portion of its own telecommunications network before being able to purchase UNEs.[54] The FCC is presently evaluating the implications of the Eighth Circuit's determination and on June 4, 1998, held a Forum to address the issue. As of the date of this Report, no action has been taken.

The DOJ, in its evaluation of Bell South's applications in both South Carolina and Louisiana, pointed to the need for less costly methods than collocation to allow competitors access to Bell South's network to perform the work of recombining in a

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[49] Ameritech /Michigan Order, **&&**333 and 336.
[50] Iowa Utilities Board, et al, vs. FCC, United States Court of Appeals for the Eighth Circuit, October 14, 1997.
[51] Ameritech /Michigan Order, **&**337.
[52] Bell South/South Carolina Order, **&**20.
[53] Ibid., **&**21.
[54] **&**199.

manner which does not require the CLEC to own facilities. The DOJ indicated that collocation involves both substantial costs and significant delay.[55]

In their review of the Bell South/Louisiana and Bell South/South Carolina applications, the FCC and DOJ both address the costing of UNEs. In Louisiana, both the FCC and DOJ found that the UNE prices adopted were forward-looking and compliant with the Act. In the Bell South/South Carolina case, however, the DOJ indicated that while various forward-looking methodologies are consistent with the Act, the South Carolina Commission had not articulated a forward-looking cost methodology. The DOJ found that the prices in Bell South's SGAT were drawn from several sources, with no explanation of the costs on which they were based.[56] Because of this, the DOJ found that it could not conclude that the prices for UNEs would permit firms to enter the South Carolina market and compete effectively.

The DOJ raised an additional concern in its review of the Bell South/Louisiana application. In its generic pricing docket, the Louisiana Commission had priced vertical switching features separately from the switch port. Part of the DOJ's concern was whether the Commission had properly applied pro-competitive pricing principles with regards to vertical services.[57]

## Discussion of Issues

There are three major issues relating to UNEs in general: (1) combining UNEs, (2) OSS for provisioning UNE combinations, and (3) pricing of UNEs. Some other issues CLECs raised will also be addressed. However, all issues relating to loops, transport, switching, directory assistance or signaling are addressed under those specific checklist items and will not be covered in this more general UNE category. OSS, which the FCC found to be a UNE, is discussed elsewhere in this report as well (i.e., Chapter II). Three issues raised by parties should be addressed in the collaborative process: (1) UNE combinations, (2) availability of ancillary equipment, and (3) issues relating to intellectual property.

1. Combinations of Network Elements. Pacific Affiant Deere submitted information on the five methods Pacific provides for access to UNEs:

- Physical collocation: cross connection POT frame in CLEC's collocation space;
- Physical collocation: cross connection to common frame in a collocation common area;
- Cross connection to CLEC UNE frame located in a common area room space, other than collocation common area, within Pacific's Central Office (CO);

[55] Evaluation of the U.S. Department of Justice, Bell South - South Carolina, November 4, 1997, p. 22.
[56] p. 41.
[57] Evaluation of the U.S. Department of Justice, Bell South - Louisiana, December 10, 1997, p. 28.

- Extension of UNEs to external area, such as a cabinet located outside the CO, provided by Pacific on Pacific's property;
- Extension of UNEs to a building not controlled by Pacific via cabling provided by the CLEC.[58]

Pacific then described the cross-connection facilities by which Pacific extends its network to the point of access selected by the CLEC.[59] Cross connection is a requirement of each of the five methods.

Pacific Affiant Hopfinger presented another alternative for combining UNEs. While Pacific is not required to recombine network elements on behalf of CLECs, it voluntarily offers its Network Component Service (NCS), which is described as a discretionary offering which Pacific offers at "market based" prices.[60] The rate schedule includes the recurring and nonrecurring charges for combining a two-wire analog loop to an analog line port, with rates for other combinations subject to negotiation.

Parties commented on Pacific's five methods. MCI stated that the Missouri PSC rejected Southwestern Bell Telephone's five methods because manual cross connects will restrict substantially the number of customers who can be converted to service provided through UNE combinations. MCI referred to this is a "gating factor" which would severely limit the number of customers who could be served via UNE combinations, and described the installation of cross connects as a labor-intensive manual process.[61] Both AT&T and MCI described the manual recombination of UNEs via cross connections as unreliable, with a greater potential for failure. MCI stated that the cross-connection of UNEs would require the new entrant to incur costs which the ILEC does not have to incur. MCI also described Pacific's plan to implement the five combination options as undeveloped. Pacific has provided only a high level overview, according to MCI. MCI complained that Pacific does not offer direct access to the Main Distributing Frame (MDF), or any electronic access through the "recent change" capability in Pacific's switches.

In its rebuttal testimony, AT&T proposes three possible alternatives to collocation or other remote manual recombination: 1) use of the recent change capability in Pacific's switch; 2) direct access to the central office by a third party vendor to separate and recombine elements; and 3) logical combinations using an electronic cross-connection frame. AT&T asserts that these arrangements permit the recombination of network elements and would avoid many of the costs of Pacific's requirements. In contrast to Pacific's requirements, AT&T states that many of these other arrangements do not require a CLEC to provide its own facilities in order to purchase UNEs.[62] Pacific responds that AT&T's proposal for direct access to Pacific's CO equipment constitutes a taking and is

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[58] William Deere affidavit, March 31, 1998, **&&**111-115.
[59] **&**119.
[60] Curtis L. Hopfinger affidavit, March 31, 1998, **&**74.
[61] MCI, April 30, 1998 filing, p. 34.
[62] Affidavit of Robert Falcone and Gary Rall on Behalf of AT&T Communications of California, Inc., **&**102.

not required under the Eighth Circuit's decision. Pacific terms AT&T's request for electronic access as "unnecessary" and "unlawful."[63]

LCI asserts that all five methods Pacific proposes to combine UNEs require the establishment of facilities, which, according to LCI, is contrary to the Eighth Circuit's ruling. Pacific responds that it has presented multiple methods of accessing UNEs and cannot be required to afford access to recombined elements. However, for those CLECs which do not want to recombine elements themselves, Pacific provides its NCS service (described above). In addition, Pacific notes that CLECs are not limited to the five methods listed; they can request others.[64] Pacific states that cross-connects are not as unreliable as AT&T asserts. Pacific sees cross connects as a "way of life" for all customers.[65]

2. OSS Systems for Combining UNEs. AT&T asserts that Pacific's OSS systems cannot support large volumes of UNE combination orders. As discussed under Checklist Item Six, MCI is the only carrier to purchase UNE combinations. Moreover, those combinations were for MCI's trial of the UNE platform, not for provision of service to the general public. AT&T states that there are no ordering processes in place for most combinations.

In another OSS issue, AT&T attacks Pacific's proposed process to migrate customers from resale to the UNE platform. Pacific says it must process both disconnect and move orders for each customer.

In its Ameritech/Michigan order, the FCC stated its intent to verify whether the OSS systems for ordering and provisioning of UNE combinations were adequate. In order to determine adequate compliance, the CPUC must be able to make that determination as well. Given the fact that UNE combinations are currently being tested by only one carrier and are not ubiquitously deployed throughout Pacific's network, the current record of this proceeding does not support a determination that Pacific's OSS processes for implementing UNE combinations are adequate. (See OSS section for further information.)

3. Pricing of UNEs. A number of parties (Comptel, TCG, Sprint, AT&T, MCI) criticized Pacific's UNE pricing. Among the complaints were the interim nature of both recurring and nonrecurring charges (NRCs) for UNEs, and that the interim rates are not cost-based and therefore inconsistent with 252(d)(1). The NRCs are seen to be artificially high because they were based on manual processes and therefore are not forward looking. Also, some parties expressed concern that vertical features are priced separately and not included in the rate for the switching function.

[63] Pacific Bell, May 20, 1998 filing, p. 46.
[64] p. 40.
[65] p. 43.

The pricing of UNEs is expected to be addressed in the Commission's generic costing proceeding, and will not be reviewed within the scope of this 271 proceeding. It is the CPUC's position that the FCC's rules allow states to perform further unbundling of elements than was proposed by the FCC. Therefore the CPUC's decision to unbundle switch features from the basic switching function is allowable, since all the elements are priced using forward-looking costs.

4. Miscellaneous Issues. Parties raised three other significant issues relating to UNEs.

- Pacific does not allow access to dark fiber (MCI);[66]
- Pacific refuses to provide ancillary equipment (amplifiers, pads, equalizers and signaling units) needed to provide service through UNEs (AT&T);
- AT&T asserts that Pacific should negotiate licenses for intellectual property rights associated with network elements on the behalf of CLECs.

Pacific's responses to the three issues listed above are:

- Pacific is not required to provide dark fiber. State commissions were given the discretion to determine if dark fiber should be included as a UNE, and the CPUC determined that it should not.
- Pacific responds that the ancillary equipment AT&T requests is not defined. AT&T can use the bona fide Request (BFR) process to obtain the equipment.
- Pacific responds that AT&T's claim of difficulty in obtaining licenses does not have any substance. AT&T has presented no evidence that it has had difficulty getting a license from any vendor. Pacific says it will assist AT&T in determining which vendors need to be contacted concerning intellectual property rights.

**Issues Selected for the Collaborative Process**

- Pacific must present evidence that it can provision combinations of network elements.
- Pacific must prove that the five methods it proposes for accessing UNEs are adequate for combining elements.
- Pacific must present proof that the OSS it proposes for ordering, provisioning and billing of UNE combinations can adequately accommodate a significant volume of orders in an accurate and timely manner.

[66] Dark fiber is unused transmission media in the ILEC's network.

- Parties need to develop a list of the ancillary equipment required to provision particular UNE combinations and explore the issue of how to provide CLECs access to that ancillary equipment.
- Parties need to expedite and simplify the process for CLECs to gain access to intellectual property rights.
- Parties need to explore the issue of the number of customers which can be transferred to another carrier using manual cross connects
- Staff is concerned that Pacific's options for combining UNEs are costly, slow, and may not have equivalent reliability as Pacific's retail operations. During the collaborative process, staff will explore various options, including the use of the recent change capability, that do not require competitors to own their own facilities.

## C. ITEM THREE – Rights-of-Way

Has Pacific provided nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by Pacific at just and reasonable rates in accordance with the requirements of section 224 of the Communications Act of 1934, as amended by the FTA96 pursuant to 271(c)(2)(B)(iii), and applicable rules promulgated by the FCC?

Based on staff's analysis, it appears that Pacific is meeting federal performance guidelines for this checklist item.

### FCC Guidance in Prior 271 Filings

In its Michigan 271 decision, the FCC found that Ameritech "appear(ed) to satisfy" the FTA96's rights-of-way (ROW) requirement by providing nondiscriminatory access through three means: by providing access to maps and records; by employing a nondiscriminatory methodology for assigning spare capacity between competing carriers; and by ensuring comparable treatment in completing the steps for access to these items. (¶¶ 117-118.). The FCC notes that Ameritech also agreed to comply with any state requirements.

### Discussion of Issues

Staff analysis indicates that, at this time, Pacific is providing nondiscriminatory access to the three necessary ROW elements outlined in the FCC's Ameritech decision: by providing access to maps and records; by employing a nondiscriminatory methodology for assigning spare capacity between competing carriers; and by ensuring comparable treatment in completing the steps for access to these items.

Further, for the issues raised by CLECs, staff found that they were either not timely, ubiquitous, or significant, or any combination of the three. In staff's opinion, the issues were either adequately refuted by Pacific, or were one-time occurrences and were therefore less significant than if they had happened repeatedly.

Staff also found that issues involving freely negotiated terms (i.e. part of an Interconnection Agreement) were not considered significant complaints because they were agreed to by both parties. Staff realizes that this may appear to contradict stated concerns in the OSS Appendix section of this Report regarding the "purported one-sided bargaining power of Pacific." Unlike the OSS Appendix situation, however, in reviewing the ROW filings, staff found that Pacific exercising undue market power in ROW negotiations did not appear to be a notable concern of CLECs.

The following list contains a number, but not all, of the ROW complaints in the record. It is meant to illustrate staff's logic in reaching the conclusion that complaints did not amount to conclusive evidence. In reviewing the record, none of the complaints appeared chronic or to have a significant impact on the CLEC's ability to meaningfully compete. Each issue documented here is accompanied by an indication of why staff did not find the issue significant, timely, and/or ubiquitous.

- MCI asserts that Pacific cannot be in compliance with checklist item 271(c)(2)(B)(iii) until the Commission has adopted rules establishing terms for ROW access. (MCI Br. p 39-41.) Staff believes that this Commission does not have to adopt detailed rules governing a particular checklist item before Pacific is allowed to prove compliance (with the obvious caveat that Pacific must comply with any future Commission rulings pertaining to this checklist item).
- MCI reports that Pacific is illegally setting aside pole attachment space for its own future use. (MCI Br. p 41-42.) Pacific responds that "the interconnection agreement arbitrated between Pacific Bell and MCI, which the CPUC approved in January 1997, expressly provides that Pacific Bell may set aside conduit space if it has conducted an engineering study and if construction is planned." (By "conduit space" staff presumes Pacific is referring to pole attachment space, pursuant to MCI's allegation. Pacific 5/20/98 filing, p 51.) Staff finds Pacific's rebuttal adequate because it rests of a previous determination by the Commission.
- Covad reports that Pacific would only offer them a non-negotiable license agreement pursuant to ROW. (Covad Resp. p 11.) Pacific denies that it refused to negotiate with Covad; and, even if they had, Covad would have had recourse through mediation or arbitration. Staff finds Pacific's rebuttal significant; CLECs do, in fact, have further recourse as indicated by Pacific. Further, because this issue -- a failure to negotiate -- was not raised by other CLECs in terms of ROW, staff did not find the complaint significant enough to impact Pacific's compliance at this time.
- CCTA claims that Pacific requires cable companies to reimburse Pacific for inspecting their construction on poles. (CCTA Br. At 20-21) Pacific responds that this complaint involves a freely negotiated agreement between Pacific and CCTA members. (Pacific

5/20/98 filing, p 52.) Staff finds Pacific's rebuttal adequate, because parties freely negotiated the agreement.

- CCTA alleges that, as a condition of attachment, Pacific requires cable companies to correct existing pole violations that they did not create. In staff's opinion, this allegation is inadequately documented by CCTA – they provide no proof that they actually had to pay for damage created by Pacific or another carrier. Because there is no evidence on the record to the contrary, staff finds Pacific's rebuttal adequate, that "the term to which CCTA refers simply requires cable companies to pay for violations created by the cable operators themselves." (Pacific 5/20/98 filing, p 52.)
- Brooks reports that it was denied property access by a building owner, and, as a remedy, Pacific would not allow access through its established access.[67] Pacific responds that this issue is pending before the CPUC in a separate proceeding, Irvine Apartment Communities (Cox representing) v. Pacific Bell (D. 98-02-020). This issue will be determined in the pending complaint case.
- AT&T alleges that Pacific places unfair restrictions on the number of cables in an interduct. (AT&T Br. p 20.) In its 5/28/98 filing, Pacific responds that this is the policy Pacific follows for its own cables and interducts. Staff therefore finds that this does not appear to be discriminatory and therefore does not appear to be a significant complaint.
- AT&T also states that Pacific fails to respond within ten days to ROW requests, per AT&T's Interconnection Agreement. (AT&T Br., p 21.) AT&T cites two specific access examples of untimely response. For the both examples, Pacific replies that the response time negotiated in the ICA is not ten days, but rather 45 days. For the first example – a March 1997 request for access to conduit on Airport Boulevard in Los Angeles -- Pacific states that the request was resolved within the required 45 days. (Pacific 5/20, p 51.) For the second example – a March 1997 request for information on conduit availability in Gardena – Pacific replies that it received no written requests from AT&T. (Pacific, May 20, 1998, filing, p 51.) For both of these examples, staff believes that the 271 process is not intended to mediate contract interpretation disputes; therefore the issues are not addressed in this 271 proceeding.
- In its Brief, AT&T reports that in June 1996, Pacific "agreed to complete 'make ready' work on a section of conduit in Los Angeles within 90 days." Because the incident happened in 1996, staff does not consider it timely and does not consider this issue further.
- Finally, AT&T reports that, during construction of the "Santa Monica Project," Pacific refused access to pole risers, necessitating that AT&T install its own. (AT&T Parks Aff. ¶¶ 20-29.) Pacific responds that the likely reason was because no space was available. In any case, Pacific has no record of AT&T filing any complaint regarding this particular situation. Staff found the incident to be a one-time occurrence, complained of by one carrier (AT&T), and that therefore the complaint does not appear significant.

[67] Brooks Brief, p. 7.

## D. ITEM FOUR – Unbundled Loop

Has Pacific Bell provided access and interconnection to local loop transmission from the central office to the customer's premises, unbundled from local switching or other services?

Pacific has not demonstrated that unbundled local loops are being provided in accordance with the Act.

### FCC Guidance in Prior 271 Filings

The FCC provides no specific guidance on this checklist item.

### Discussion of Issues

According to Pacific, it has provided nearly 34,000 unbundled loops to CLECs in California. However, although loops are available, the record in this proceeding indicates that CLECs have experienced significant problems in obtaining unbundled loops from Pacific. Specific problems include:

- untimely and inaccurate provisioning of loops, especially those with number portability;
- lack of clear and consistent guidelines for requesting loops for other than POTS type service; and
- provisioning of IDLC or equivalent loops.

In order for CLECs to have a meaningful opportunity to compete, unbundled local loops must be provided in a timely and consistent manner. CLECs maintain that Pacific has not been timely or accurate in delivering unbundled loops.[68] Pacific has missed committed due dates and failed to notify CLECs in a timely basis that a jeopardy situation exists. This is especially problematic for CLECs when the loop cutover needs to be coordinated with installation of number portability. Otherwise, customers lose dial tone or cannot receive calls. The record does not indicate that a clear and consistent process is being utilized to coordinate loop cutovers. Pacific's rebuttal, that promised dates for provisioning have not been met because certain facilities were unavailable or damaged, is not compelling.[69] No evidence is offered that the problem of missing due dates and not providing proper notification has been mitigated. Staff recommends that the requirements for timely and coordinated provisioning and jeopardy notification procedures be explored further in the collaborative process.

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[68] MCI, Nextlink, Covad and TCG 4/30/98 Reply and AT&T 3/31/98 Response.
[69] Pacific Brief, May 20, 1998, p. 56.

In an allied issue, TCG asserts that loops which have been provisioned incorrectly and are not functional become a repair issue as opposed to a provisioning issue.[70] According to TCG, it notifies Pacific of a non-functioning loop and is then referred to the repair process which requires the initiation of a trouble ticket and significant delays in solving the problem. TCG asserts that the non-functioning loop is shifted from the provisioning process to the maintenance process, which is in violation of its ICA which requires that functional loops be delivered. Staff recommends that the treatment of faulty loop provisioning be examined in the collaborative process.

CLECs complain that, with the exception of POTS service, Pacific has not made technical specifications for loops available, including the specifications for conditioning loops to have the ability for high speed data transmission.[71] CLECs believe that they are therefore constrained in the ability to compete for business customers because Pacific offers those types of loops to their own retail customers. Pacific has not provided evidence that the specifications for the desired loops are not available but rather asserts that CLECs must use the INER process to request special loop types. As was mentioned in the discussion on Checklist Item One, Interconnection, the record does not provide evidence that there is a clear understanding on how to use the INER process. CLECs assert that the INER process is not effective in getting their special requests addressed by Pacific. Staff recommends that requirements for providing technical specifications for unbundled loops, as well as the INER process for requesting special types of unbundled loops be addressed in the collaborative process.

Unbundled loops that CLECs have requested include loops that are provisioned with Integrated Digital Loop Carriers (IDLCs). Pacific asserts that IDLCs cannot be separated into switch and loop elements and therefore cannot be provided on an unbundled basis to CLECs.[72] Pacific explains that if there is an alternative method of providing service in parallel to IDLC, Pacific can move the customer to the alternative service, e.g. copper wire. If facilities are not available, CLECs will need to use the INER process.[73] Pacific also asserts that less than two percent of Pacific's loops are served on IDLC[74] so the problem is of minor concern. Staff recommends that the process Pacific uses to provision IDLCs should be addressed in the collaborative process.

Various CLECs have ordered XDSL capable unbundled loops from Pacific. CLECs assert that Pacific requires XDSL loops to comport with the company's specifications rather than industry standards. According to Pacific, the company must protect against interference with other services and damage to the network. This causes CLECs to have to purchase specific equipment that comports with Pacific's specifications only. MCI notes that Pacific has introduced a Spectrum Management program to prevent interference

[70] TCG Reply 4/30/98, p. 16.
[71] AT&T Response, March 31, 1998, Attachment A.
[72] Deere Rebuttal Affidavit , **&** 44.
[73] **&**45.
[74] **&**44.

with other services. MCI is concerned that Pacific's Spectrum Management program may not treat all forms of DSL technology in a competitively neutral manner. Staff recommends that these issues be addressed in the collaborative process.

**Issues Selected for the Collaborative Process**

Staff recommends that in the collaborative process participants should:

- establish a process to ensure timely provisioning and adequate coordination of loop cutovers;
- determine how loops which are not functioning following installation should be treated;
- develop a process for CLECs to obtain technical specifications for unbundled loops, including an effective use of the INER process to request particular types of unbundled loops;
- outline requirements for how Pacific provisions IDLC and equivalent loops.
- address the implications regarding the use of Pacific's specifications, as opposed to industry standards, for XDSL loop provisioning;
- review Pacific's Spectrum Management program to determine if it is competitively netural.

## E. ITEM FIVE –Local Transport

Does the access and interconnection provided by Pacific include local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services in accordance with the requirements of section 271(c)(2)(B)(v) of FTA96 and applicable rules promulgated by the FCC?

Staff believes that further information is needed to evaluate Pacific's compliance with this checklist item, and therefore cannot determine at this time that Pacific has met this checklist item. The 271 collaborative process will be used to gather necessary information, as outlined below.

**FCC Guidance in Prior 271 Filings**

In its Ameritech decision (¶ 300) the FCC determined that incumbent LECs are required to comply with the transport requirements in the Local Competition Third Reconsideration Order. Particularly, ILECs are to provide "shared transport among all end offices or tandem switches in the incumbent LEC's network (i.e., between end offices, between tandems, and between tandems and end offices)." (FCC 97-295.) The FCC also affirms

that ILECs must provide CLECs with access to the shared transport for all transmission facilities connecting ILECs' switches. (Ameritech, ¶ 306.)

**Discussion of Issues**

Staff found local transport issues to be definitionally arcane. Neither Pacific nor competitors clearly defined the issues, concerns and rebuttals. Because of the lack of clarity, staff requests parties to define, within the collaborative process, the scope of the checklist item itself as well as issues raised by competitors, as outlined below.

In addition to the need for general clarification, parties have identified the following local transport issues:

- MCI claims that Pacific does not make unbundled dedicated transport available. (MCI Br. p 50.) Pacific responds that this is not true. (Deere Aff. ¶ 70.)
- AT&T claims that Pacific does not cooperate in providing dedicated transport facilities to a point of access designated by CLECs. (AT&T Br. p 100-101.) Pacific refutes this claim, saying they provide the necessary cross-connects. (Deere Aff. ¶ 73.)
- AT&T states that it must pay non-cost-based access rates for the use of Special Access trunk groups for trunks that Pacific provides to CLECs outside of Pacific's service territory. (AT&T Br. p 100-101; AT&T, Johnson Aff. ¶¶44.) Pacific responds that "(t)he trunks that AT&T complains of are not ... local trunks, and therefore are not subject to the unbundling requirements of Sections 251 and 252 of the Act. Under the Act, Pacific is only required to provide interconnection for local transport, not interexchange transport for access traffic." (Pacific 5/20/98 Response, p 60.)

**Issues Selected for the Collaborative Process**

For the reasons indicated, staff would like to address all the issues listed above within the collaborative process.

**F. ITEM SIX –Unbundled Switching**

Does Pacific provide local switching unbundled from transport, local loop transmission, or other services in accordance with the requirements of Section 271(c)(2)(B)(vi) of FTA96, and applicable rules promulgated by the FCC?

Pacific has not complied with this checklist item. Unbundled switching is not commercially available. Also, competitors have encountered difficulty obtaining some switching options.

**FCC Guidance in Prior 271 Filings**

In its Ameritech/Michigan order, the FCC found that Ameritech constrained the ability of CLECs to provide exchange access service, and stated that new entrants, not the incumbent LEC, may assess access charges on IXCs originating or terminating toll calls using the unbundled switching element.[75] The FCC expressed concern with Ameritech's technical ability to provide usage information in a manner that allows CLECs to collect access revenues from IXCs. Ameritech had indicated that it is not technically feasible to provide either precise usage data or the identity of the originating carrier.

The FCC found that Ameritech must establish, by a preponderance of the evidence, that it provides the entire switching capability on a nondiscriminatory basis. In addition to allowing CLECs to provide exchange access service, the FCC found that Ameritech must allow the purchase of trunk ports on a shared basis and access to the routing tables resident in its switches.[76]

In its review of Ameritech's 271 application, the DOJ stated its concern that Ameritech was not actually providing local switching to any competitor. The DOJ indicated that in this case, actual commercial usage is particularly important because unbundled switching requires significant network capabilities. The DOJ suggested that Ameritech should perform technical trials to prove that it can offer unbundled switching.[77]

**Background**

Pacific offers three versions of unbundled switching:

- **Option A** – CLEC customers are served by using the unbundled network elements in a Pacific central office switch, and are switched and routed over the same local transport facilities as Pacific's customers.

[75] Ameritech/Michigan Order, **&**326.
[76] **&**331.
[77] Evaluation of the U.S. Department of Justice, Ameritech - Michigan, June 25, 1997.

- **Option B** – Option B differs from Option A because it provides customized routing of 0+, 0- and/or directory assistance calls. The difference between Options A and B is that, in Option B, the CLEC is the owner of the operator assistance/directory assistance platform. Also, Option B uses dedicated transport instead of shared transport. The ROAR variation of Option B allows a CLEC to have calls from its resale customers routed to the CLEC's operator platform. According to Pacific, as of March 1998 one CLEC has placed six orders for ROAR.
- **Option C** -- Option C allows the CLEC to custom-design its own switch-level routing scheme on an NPA-NXX basis, and therefore, it can be different for each CLEC.

**Discussion of Issues**

While both AT&T and MCI have discussed various unbundled switching options with Pacific, MCI appears to be the only CLEC currently purchasing unbundled switching from Pacific. According to MCI, it is using the unbundled switch ports (Option A) for technical trials of combinations of unbundled network elements. MCI is not providing service to the public using Pacific's unbundled switching. Also, according to AT&T, Pacific is not providing tandem switch recordings that allow CLECs to bill IXCs for originating and terminating traffic. According to AT&T, Pacific committed to providing those records in May - June 1998. Until then, there is no way for the CLEC to bill IXCs for switched access, as required by the FCC in its Ameritech order. We therefore conclude that Option A is not commercially available at the present time.

Pacific contends that it had six orders for ROAR as of March 1998, but staff does not have information on whether ROAR has actually been deployed and is operational. The status of ROAR deployment will be examined in the collaborative process.

AT&T and MCI have both discussed implementation of both Options B and C with Pacific. MCI went so far as to submit a service request for Option B in August 1997, which Pacific rejected as incomplete. Also, the parties dispute what needs to happen to implement Option C. The process of negotiating implementation of the two switching options is contentious and appears to be fraught with delays. The issue of what is and is not technically feasible is also an issue which parties dispute.

Parties raised two other issues:

- OSS systems for ordering switch ports are inadequate for general deployment. Orders have to be sent via fax, and Pacific requires that MCI place a phone call to Pacific's service center before Option A orders are faxed over (MCI). This OSS issue will be addressed in the context of all other OSS issues in the 271 proceeding.

- Pacific assesses access charges when CLECs use the unbundled switching element so switching is not cost-based (AT&T). The access charge issue will be determined on the basis of the final outcome of the appeal of the AT&T/Pacific Bell arbitration case. On May 11, 1998, the Northern District Court of California concluded that the CPUC improperly allowed Pacific to assess switched access charges that were not based on the cost of providing the network element.[78]

**Issues Selected for the Collaborative Process**

- Pacific must demonstrate that unbundled switching is available as a legal and practical matter.
- Pacific must demonstrate that its OSS can accommodate a significant volume of Option A service requests.
- Pacific must demonstrate that it can provide CLECs which purchase the unbundled switching element with the necessary information to bill IXCs for originating or terminating access.
- Review Pacific's practices regarding Option B and Option C, to determine how to ensure that CLECs are able to implement in a timely manner.
- Determine if Option B ROAR has been implemented, and if it is in operation, determine how to evaluate the implementation.
- Establish technical trials for Options B and C and use those trials to verify that these switching options are available as a legal and practical matter.

## G. ITEM SEVEN —Nondiscriminatory Access to 911 and E911, Directory Assistance Services, and Operator Call Completion Services.

Has Pacific provided nondiscriminatory access to the following, pursuant to 271(c)(2)(B)(vii) and applicable rules promulgated by the FCC: (a) 911 and E911 services; (b) directory assistance services to allow the other carrier's customers to obtain telephone numbers; and (c) call completion services?

Pacific has not met this checklist item, due to problems with its 911 and directory assistance services. Pacific is, however, providing nondiscriminatory access to its operator call completion service.

**FCC Guidance in Prior 271 Filings**

[78] AT&T Communications vs. Pacific Bell, Case No. C97-0080 SI (appeal pending).

The FCC has not addressed directory assistance or call completion issues in previous 271 decisions. Because of health and safety concerns, however, the FCC's performance standards for 911/ E911 are stringent and detailed. The FCC reaches the following conclusions regarding 911/ E911:

- An ILEC "must maintain the 911 database entries for competing LECs with the same accuracy and reliability that it maintains the database entries for its own customers" and must, in general, offer access at parity. (Ameritech, ¶ ¶ 256; also see SC Order ¶ 229.)
- For facilities-based carriers, 911 access also "includes the provision of unbundled access to (an ILEC's) 911 database and 911 interconnection, including the provision of dedicated trunks from the requesting carrier's switching facilities to the 911 control office at parity with what Ameritech provides to itself." (Ameritech, ¶ 256.)
- The FCC recognizes the immensely important health and safety issues associated with 911, and thereby validates close scrutiny of accuracy and database integrity. (¶ 261-279.)
- The ILEC must provide adequate and regular error reports to the carrier. (¶ 272.)
- In its Michigan decision, the FCC places an emphasis on prevention, stating that "preventative, rather than remedial, measures are particularly imperative." (¶ 276.)
- When the ILEC operates 911 service, a CLEC customer that calls 911 must receive the same response as a BOC customer who calls 911. (¶¶ 260, 262-64.)
- The FCC determined that, while databases need not be error-free, a BOC must show that errors are detected and remedied as quickly for entries submitted by CLECs as for its own entries. (¶ 278.)
- Although BellSouth was found to have met its 911 burden of proof, the FCC concluded that notifying carriers of errors by manual means (i.e. fax) could lead "to untimely notification or to problems with the accuracy and integrity of the 911 database." (SC Order ¶ 230.)

**Discussion of Issues**

***911 and E911***

First, because of the possibility for error, staff is concerned about the lack of pre-ordering/ ordering integration when provisioning E911 service to competitors. Aside from this general concern, the record indicates the following specific issues:

MCI states that the E911 listing is changed "on all orders when resale customers migrate their service from Pacific to a CLEC (or from one CLEC to another). The act of changing the E911 listing for every resale customer, even when there are no changes to the customer's underlying service or location, creates an opportunity for errors to occur during the process, thus placing the customer unnecessarily at risk." (MCI Appen. B Resp, p 56.) Pacific responds that, "far from increasing database errors, this procedure prevents them, by ensuring that the customer record is current." (Pacific Resp. to Comments, p 67.) Staff does not find Pacific's logic reasonable; it seems logical that additional manual inputs may result in more errors, rather than less. This concern is reflected in FCC guidance expressing concern with manual intervention for processing 911 orders. (SC Order ¶ 230.)

Pacific documents that it provides a "real-time verification system" for 911 listings and states that CLECs can use this to ensure the accuracy of Pacific's listings. Pacific states "(i)f CLECs wish to confirm the accuracy of E911 database entries, they can do so directly. Facilities-based carriers are able to check their listings using the MS Gateway ... and resellers now are able to do the same via TN Query." (Pacific 5/20, p 67.) Staff is concerned that many CLECs are not using these systems, either because they are not aware of them or for some other reason.

Pacific's Affiant Nipps reports that, in June of 1997 Sprint "initiated a complaint regarding 22 telephone numbers that had not delivered correct information to emergency services providers." (Nipps Affidavit, ¶ 53.) Sprint raised the issue with Pacific and, as a result, Pacific initiated a process to reconcile discrepancies through comparisons between separate databases (namely CABS billing system and the E911 database). This process includes a weekly comparison and synchronization of the CABS, CRIS, and E911 databases. (Pacific, Nipps Aff., ¶ 55.)

While Pacific appears to have responded quickly to reported problems with inaccurate 911 entries, staff is concerned about Pacific's ability to maintain this necessary, but seemingly cumbersome comparison between the separate databases, especially when faced with increased competition. Staff would like to explore, in the collaborative process, options for upgrading or streamlining Pacific's E911 system so that additional comparative steps

are not necessary. This recommendation is in the spirit of FCC guidance stressing preventative, rather than remedial, measures for 911/ E911 (as indicated above).

In its Brief, Pacific alleges that its "conversion to CRIS, scheduled for May 1998, will eliminate many potential errors by adding up-front edits; (sic) which will stop orders from being submitted without meeting the rules for certain fields." In addition, Pacific reports that "E911 data will flow directly to the E911 database from the SORD order further lowering the possibility of error." Staff finds that, per FCC guidance, a 271 evaluation cannot rely upon promises of future performance. Staff believes that Pacific's assertions of improved performance with the CRIS system is therefore moot for purposes of this evaluation.

***Directory Assistance Services***

Several CLECs (TCG, PacWest, Brooks, LCI, Nextlink, AT&T and MCI) cited problems with inaccurate information being inputted into Pacific's directory assistance (DA) database. They also assert that some customers that had been successfully inputted into the database were subsequently dropped from the database. The DA problems were experienced by both resale and facilities-based customers. Facilities-based carriers are responsible for inputting their own customers into the DA database, while information on resale customers is inputted by Pacific. In its April 30, 1998, filing, MCI included a chronology of problems with provisioning of directory listings which extended from September 1996 to March 1998[79] so the problem appears to have persisted over time. MCI's final entry on its chronology was a large business customer whose main listing had dropped out of Pacific's 411 database three times.

Pacific did not give any explanation for why customers were dropped from the 411 database. Rather, Pacific denies that it has dropped listings from the DA database after they were properly entered.[80] In his Rebuttal Affidavit, Pacific Affiant Nipps outlines various CLEC input errors which make it appear that listings have been dropped from the DA database.[81] None of the examples given explain the phenomenon of listings which have been successfully entered into the DA database, and their existence verified by the CLEC, but which later drop out of the database.

From Pacific's comments, it appears that CLECs make significant errors in inputting information into the DA database. Staff believes this could result from a number of

[79] Comments of MCI Communications Corporation (U5011 C) and MCI Metro Access Transmission Services, Inc. (U 5253 C) on Pacific Bell's Draft Section 271 Application, April 30, 1998, Attachment 7.1.
[80] Pacific Bell's (U 1001 C) Response to Comments on its Draft Application for Authority to Provide InterLATA Services in California, May 20,1998, p. 69.
[81] Rebuttal Affidavit of Lyndall Nipps, **&**3.

factors, including inadequate training by Pacific, inadequate training or internal communication on the part of the CLEC, etc., warranting further scrutiny of the process.

In his March 31, 1998, Pacific affidavit, Nipps reviewed DA listings over the September to December 1997 period and found that 69% of the listing errors were generated by CLECs. He also stated that 94% of the errors fell within three categories: listings sent with all capital letters, use of non-standard city names, and the lack of an end-user customer last name.[82] Staff believes that at least some of the type of formatting errors Nipps listed should be able to be overcome with clear instructions and adequate training, although the problem would be solved most effectively by an interface with up-front edits that allows CLECs to find errors before data is entered. Pacific does not indicate what the other 31% of the errors could be attributed to, but presumably many of them are due to system or human errors on Pacific's side, since they are not attributed to the CLECs. No information was proffered on whether Pacific experiences a similar 31% error rate in its retail operations. Therefore Pacific has made no showing of parity.

Because Pacific denies that companies drop out of the DA database, it appears that the company does not know what is causing these documented errors. A root cause analysis of errors and drops must be undertaken to determine how both types of errors can be prevented by both Pacific and CLECs.

Pacific has not provided nondiscriminatory access to directory assistance systems. CLECs have experienced errors in data inputted into Pacific's directory assistance database, and companies which have been successfully entered into the directory assistance database are later dropped. Business customers must be able to rely on accurate listings at all times or they will lose business. Also, Pacific has presented no proof that its DA provisioning for CLECs is at parity with its retail operations.

### *Call Completion Issues*

CLECs offered no evidence of call completion problems. Pacific is assumed to have passed this portion of checklist item seven.

### **Issues Selected for the Collaborative Process**

- review the process for entry and re-entry of E911 listings;
- review the "real-time verification system" for 911 to determine ease of access for CLECs;
- additional clarification is needed on CLECs' abilities to verify orders in general, and "real-time" verification systems in particular;

[82] Affidavit of Lyndall W. Nipps, March 31, 1998, **&**58.

- determine a way to analyze the performance of the shift from CABS to CRIS and determine the impact on data in the 911 and DA systems;
- perform a root cause analysis of DA errors and drops to determine how to prevent the problem;
- prepare clear instructions/process for CLECs to use in inputting 911 and DA entries.
- Implement an interface with up-front edits which allows CLECs to correct errors before data is entered.

## H. ITEM EIGHT – White Pages

Has Pacific provided white pages directory listings of customers of the other carriers' telephone exchange service, pursuant to section 271(c )(2)(B)(viii)?

Pacific has not demonstrated that white pages directory listings are being provided in accordance with the Act.

### FCC Guidance in Prior 271 Filings

The FCC does not provide guidance on this checklist item in prior 271 decisions.

### Discussion of Issues

According to Pacific, it has provided approximately 197,000 white pages directory listings to CLECs in California. However, although access to white pages directory listings is available, the record in this proceeding indicates that competitors have experienced problems in obtaining correct and complete listings from Pacific. CLECs assert that Pacific has not provided white pages directory listings for CLEC customers at parity with Pacific's retail operations. Specifically, CLECs assert that they do not have direct electronic access to directory listings for verification of their customers' listings that is equivalent to Pacific's retail operations. Prior to publication, CLECs are provided an extract of their customers' listings which CLECs must review and correct in a limited timeframe, using manual processes.[83]

Because the processes for validation and updating listings are manual, due to the unavailability of electronic flow through processes, CLECs assert that error rates in listings are compounded. In rebuttal, Pacific asserts that they use the equivalent manual systems for the extract review process, but Pacific does not describe if all of its systems

[83] Sprint, Nextlink, Brooks, AT&T Responses

used for white pages listings are manual.[84] Staff therefore recommends that the requirements for providing mechanized capabilities for CLECs to input and check white pages directory listings be addressed in the collaborative process.

**Issues Selected for the Collaborative Process**

Staff recommends that participants should::

- review the current system Pacific uses for its retail operations;
- provide mechanized capabilities for CLECs to input and check white pages directory listings.

## I. ITEM NINE – Access to Telephone Numbers

Has Pacific provided nondiscriminatory access to telephone numbers for assignment to the other carriers' telephone exchange service customers, pursuant to section 271(c)(2)(B)(ix)?

Staff has determined that Pacific has met this checklist requirement. Competitors have presented no current or timely examples of noncompliance.

### FCC Guidance in Prior 271 Filings

The FCC does not provide guidance on this checklist item in prior 271 decisions.

### Discussion of Issues

The record on access to telephone numbers contains anecdotal incidents and allegations that Pacific manipulated the numbering process, both overtly and covertly. CLECs assert that because the code administrator is a Pacific employee, that relationship allowed the company access to information not available to all other parties.[85] The assertions against Pacific include: causing a shortage of telephone numbers by stockpiling NXX codes, manipulating the jeopardy process, and offering second line promotions to their own customers while CLECs were awaiting NXX assignments.

As the incumbent, Pacific has had access to the greatest number of NXX codes. But, despite apparent historical inequities, on a going forward basis because the function of

[84] Pacific's 5/20/98 Reply.
[85] TCG, AT&T Brooks and Cox, Response 3/31/98 and ELI Reply 4/30/98.

code administrator has been transferred to a neutral third party, any influence that Pacific may have over the process will be mitigated.

## J. ITEM TEN – Access to Databases

Has Pacific provided nondiscriminatory access to databases and associated signaling necessary for call routing and completion, pursuant to Section 271(c)(2)(B)(x) of FTA96 and applicable rules promulgated by the FCC?

Pacific has not demonstrated compliance with this checklist item.

### FCC Guidance in the First Report and Order

While the FCC has not provided guidance on access to databases and signaling in prior 271 proceedings, it does give direction in the First Report and Order on Interconnection **&&**484-492. The FCC requires nondiscriminatory access to the Line Information Database (LIDB) and the Toll Free Calling Database and Number Portability databases, using Pacific's SS7 network. The FCC also concluded that access to call-related databases used in the ILEC's AIN (Advanced Intelligent Network) to be critical to competition in the local market and found such access to be technically feasible either through the use of the incumbent's unbundled switching element, or through the new entrant's own switch.

The FCC indicated that mediation mechanisms are needed to protect data in the incumbent's AIN Service Control Point (SCP). Parties are urged to resolve any outstanding mediation concerns. While allowing new entrants access to ILEC's software applications that reside in the AIN databases may reduce the ILEC's incentive to develop new and advanced services using AIN, the FCC found that it would be a significant burden on new entrants to require them to deploy a fully redundant network architecture, including AIN databases and their application software. AIN-based services are seen to be the cutting edge of telephone exchange services, and competitors would be at a significant disadvantage if they were forced to develop their own AIN capability immediately.

In **&&**493-500, the FCC concluded that ILECs should provide access to the Service Management Systems (SMS) which allows competitors to create, modify or update information in call-related databases. Such access should be provided to new entrants in the same way the incumbent inputs its own information into the SMS. A CLEC seeking access to the SMS that is part of the ILEC's AIN would go through the ILEC's Service Creation Environment (SCE), an interface used to design, create and test AIN supported services. Once software is successfully tested in the SCE, it is transferred to the SMS where it is downloaded into an SCP database for active deployment on the network. The FCC concluded that such access is technically feasible, with no potential harm to the

network, because competitors accessing the SCE and SMS would not be communicating directly with the LEC's database or switch.

The FCC stated that this process may require some modifications, including appropriate mediation, to accommodate access by other carriers.

**Discussion of Issues**

AT&T complains that Pacific restricts access to its AIN capabilities. AT&T points to provisions in its ICA which allow access to Pacific's SMS and SCE. Under the terms of its ICA, Pacific was obligated to provide three options for accessing Pacific's SCE. Options 1 and 3 were to be available by March 31, 1997, says AT& T, but Pacific has not yet provided a procedure or method for ordering either Options 1 or 3. Similarly, Pacific has not yet partitioned the SCE database to enable Option 2 provisioning.

According to Pacific, AT&T inappropriately attempts to prejudge the outcome of the arbitration issue by raising the same issue in the instant 271 proceeding.[86] Staff does not agree that the issue should not be addressed in the 271 proceeding. The Commission has an obligation to examine any factors raised in this proceeding that could impact checklist compliance. Pacific does not refute AT&T's argument in either its April 30 or May 20 filings. While staff does not generally want to interfere in ICA implementation issues, AIN deployment is of general interest and critical to the development of the competitive market so staff will explore the issue of AIN implementation in the collaborative process.

Also, MediaOne and Nextlink both raised database-related concerns. Nextlink cited problems with gaining access to the signaling databases necessary for the provision of certain CLASS services. MediaOne's problem dealt with connecting to Pacific's SS7 network. Both problems have been resolved by Pacific, but staff is concerned that, without proper safeguards in place, problems could reoccur.

**Issues Selected for the Collaborative Process**

Based on staff's analysis, it appears that Pacific has not met federal performance guidelines for this checklist item. In the collaborative process, staff recommends that participants:

- review Pacific's deployment of AIN capabilities to determine if it is providing access to CLECs as required by the FCC;
- review how maintenance/trouble reports regarding SS7 are processed by the LOC.

[86] Curtis L. Hopfinger, Rebuttal Affidavit, May 20, 1998, **&**32.

## K. ITEM ELEVEN – Number Portability

Has Pacific provided number portability, pursuant to section 271(c)(2)(B)(xi) of the FTA96, and applicable rules promulgated by the FCC?

Because of a significant indications in the record regarding problems with provisioning interim number portability, staff finds that Pacific has not demonstrated compliance with this checklist item.

### Federal Rulings in Prior 271 Filings

Section 271 of the FTA96 requires that BOCs make number portability available to competitors. Number portability allows customers to retain their telephone number when switching from Pacific to a facilities-based competitor. Pending issuance of regulations for permanent number portability, the FCC mandated that interim methods be made available. To this end, section 271(c)(2)(B)(xi) requires a BOC to provide interim number portability (INP) through Remote Call Forwarding (RCF), direct inward dialing (DID), or other comparable arrangements.

Specific to 271 filings, in its Ameritech/Michigan 271 decision the FCC determined that it will carefully examine the BOC's implementation of permanent local number portability (LNP), and will "take very seriously any allegation that a BOC is failing to meet its current obligation to provide number portability through transitional measures pending deployment of a long-term number portability method." (¶341) The FCC also stated that the BOC must deploy permanent LNP within FCC deadlines. (Ameritech, ¶342)

### Discussion of Issues

Pacific's tariffs make both of the INP options mandated by the Act available. Also, pursuant to CPUC arbitrations, Pacific provides INP through Route Indexing, a method some CLECs indicated they may prefer. (Pacific Brief, p 51.) All CLECs that ordered INP in California ordered Pacific's RCF-type offering, Directory Number Call Forwarding (DNCF). Pacific reports that, as of March 1, 1998, they had ported more than 19,000 telephone numbers to CLECs in California. (Pacific Brief, p 51.)

A number of facilities-based carriers (ICG, TCG, PacWest, NextLink, Cox, MediaOne) document service disruptions and other problems resulting from a lack of coordination in the DNCF installation process, and specifically the service cut-over portion of the process. Service disruptions are possible within DNCF process because DNCF requires a physical

transfer of service from Pacific to the CLEC. (Pacific Brief, p 52.) Disconnection of the end-user from Pacific must be followed immediately by a new connection to the CLEC; this is called a "DNCF cut-over." (Pacific Brief, p 52.)

As indicated above, the record indicates that significant problems have occurred within DNCF cut-overs. Pacific reports that these problems began in mid-1997, "when CLEC orders for INP started to increase, (and) some disconnections occurred prior to the scheduled due date." (Pacific Brief, p 53.) In an attempt to better coordinate the process, Pacific developed two provisioning processes: To Be Called Cut (TBCC), and Frame Due Time (FDT). Both processes are designed to allow better coordination within the cut-over part of the DNCF conversion. CLECs were also to receive a Firm Order Confirmation (FOC) for INP requests. The record indicates, however, that, in spite of these control procedures, DNCF problems continued, and included non-receipt of FOCs, problems with the TBCC process, and allegations that Pacific failed to follow FDT order processes.

Pacific's general response to problems with DNCF is that there has been "marked improvement" in this area and that it is instigating a number of steps to improve the INP process. (Pacific's 5/20/98 Response, p 75.) It is clear from competitors' filings, as well as from Pacific's admissions, that DNCF coordination problems have been severe, showing a clear lack of performance. It is also clear that Pacific's promises of future performance cannot – per FCC guidance in Ameritech – serve as checklist compliance. By not adequately providing interim methods, Pacific does not comply with FCC guidelines outlined above, specifically that the FCC "will take very seriously any allegation that a BOC is failing to meet its current obligation to provide number portability through transitional measures pending deployment of a long-term number portability method." (Ameritech, ¶341)

Staff recognizes that evaluating Pacific solely in terms of interim number portability is problematic because of the current conversion away from interim portability to permanent portability. Staff therefore recommends collecting data for both interim and permanent number portability. Staff recommends addressing both INP and LNP because, first, INP may continue for some time to be the process in place for some California consumers. According to Pacific, after the FCC mandated conversions of the largest MSAs, 6% of the access lines in California will not have access to LNP. Interim processes should therefore perform adequately for any consumers living in areas without access to LNP, and who will continue to use INP. Second, the best case scenario is that LNP conversion in the targeted MSAs will be complete by December 31, 1998. This means that, even if LNP rolls out exactly as planned, CLECs will be using INP for approximately six additional months (from the date of this report). Staff believes that INP should therefore be improved as soon as possible so that CLECs will not have to experience harm for the remaining months of INP.

Finally, staff notes that the conversion to permanent number portability has been rife with delays, in both California and other states. Further, there are reports of significant

problems in some east coast MSAs that have converted to LNP. In any case, if LNP in California is delayed for any reason, CLECs would be faced with using INP for longer than the six months already necessary. Given the complexity of the conversion process and the problems to date, staff believes delays are a reasonable concern and an additional incentive to improve interim methods.

**Issues for the Collaborative Process**

Based on staff's analysis, it appears that Pacific has not met federal performance guidelines for this checklist item. In the collaborative process, staff recommends that participants:

- review, in general, how to improve coordination in provisioning INP and, potentially, LNP;
- review the process used to install DNCF and determine how to minimize service disruptions for customers and administrative problems experienced by CLECs;
- determine a way to evaluate Pacific's deployment of LNP
- determine how to evaluate Pacific's processes for transferring customers from INP to LNP.

## L. ITEM TWELVE – Dialing Parity

Has Pacific Bell provided nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of Section 251(b)(3) and pursuant to 271(c)(2)(B)(xii)?

Staff has determined that Pacific has met this checklist requirement.

**FCC Guidance in Prior 271 Filings**

The FCC does not provide guidance on this checklist item in prior 271 decisions.

**Discussion of Issues**

Dialing parity means that customers of CLECs must be able to dial the equivalent number of digits and expect the equivalent dialing delays as customers of Pacific when placing local and intraLATA toll calls. No evidence was presented that local customers of CLECs experience dialing delays or are required to dial additional digits to make local calls.

Both federal and state law requires that all local exchange providers must institute local dialing parity. FTA96 requires Pacific to institute intraLATA toll dialing parity coincident with being granted interLATA authority by the FCC.[87]

## M. ITEM THIRTEEN – Reciprocal Compensation

Has Pacific provided reciprocal compensation arrangements in accordance with the requirements of section 252(d)(2) of FTA96, pursuant to section 271(c)(2)(B)(xiii), and applicable rules promulgated by the FCC?

Staff believes that Pacific has not demonstrated compliance with this checklist item. Additional information on the availability of traffic studies must be provided before Pacific can prove compliance.

### FCC Guidance in Prior 271 Filings

Although the FCC did not widely address reciprocal compensation, it noted that there must be "just and reasonable" reciprocal compensation between the ILEC's and CLEC's networks for transport and termination of calls. (Ameritech, ¶ 293.)

### Discussion of Issues

CLEC complaints about issues covered in, or resulting from, voluntarily negotiated compensation arrangements (i.e. arrangements that are not cost-based or that are different from other CLECs' arrangements) will not be addressed in this 271 proceeding.

The following remains an area of concern:

Both AT&T and Brooks report that Pacific has not provided adequate traffic data reports. Although staff finds Pacific's May 20th response unclear, Pacific appears to allege that this is a simple billing dispute involving an incorrect billing of AT&T's local calls routed over existing access trunks, and is therefore not a valid 271 issue. (Pacific 5/20/98 Response, p

[87] Section 271(e)(2)(B) prohibits a state from ordering a Bell operating company to implement dialing parity before it enters the long distance market. But, states may adopt rules regarding the terms and conditions for implementing intraLATA dialing parity. In D.97-04-083, the Commission established the terms and conditions that California LECs, including Pacific, must meet when implementing intraLATA dialing parity.

80; Hopfinger Rebuttal Aff. ¶ 50.) Because more than one CLEC documented problems with receiving necessary reports, staff does not find Pacific's general response of "this is a simple AT&T/Pacific billing dispute" compelling. Staff believes that Pacific should provide appropriate traffic records to all CLECs to facilitate the payment of mutual compensation for calls.

**Issues Selected for the Collaborative Process**

Based on staff's analysis, it appears that Pacific has not met federal performance guidelines for this checklist item. In the collaborative process, staff recommends that participants:

- review the traffic data needs of CLECs, determine whether Pacific is providing parity treatment, and, if not, how it could provide adequate reports.

**Issues Deferred to Other Proceedings**

Many CLECs raised complaints related to Pacific's withholding compensation for traffic to Internet Service Providers (ISPs). While staff recognizes this as a significant issue, compensation for traffic to ISPs is pending before the Commission in three separate dockets: the Local Competition proceeding and two separate complaint cases, and therefore, will not be addressed here.

## N. ITEM FOURTEEN – Resale

Has Pacific provided telecommunications services for resale in accordance with the requirements of Section 251(c)(4), 252(d)(3) and pursuant to 271(c)(2)(B)(xiv) and applicable rules promulgated by the FCC?

Based on staff review of the record and application of federal guidelines, it appears that Pacific has not met this checklist requirement.

**FCC Rulings in prior 271 filings**

In the Bell South/South Carolina and Louisiana orders the FCC cited the requirement that customer-specific contract service arrangements (CSAs) be subject to the resale requirement and available to CLECs at a wholesale discount.

**Discussion of Issues**

Nine commenters stated that OSS problems were significant in the resale area. Pacific responds that all previous OSS problems relating to resale have been resolved.

No commenters raised the issue of reselling CSAs, and since the CPUC in D.97-08-059 ordered resale of CSAs, this does not appear to be an issue in this case.

CLECs raised concerns about six resale issues, which are described below, along with staff's disposition of each issue:

1. Restriction on aggregation of toll volumes by the CLEC (AT&T, MCI). The toll aggregation issue has been remanded to the Commission in the AT&T/Pacific Bell arbitration case. The CPUC will address the issue in that context.
2. Need for final wholesale discounts based on avoided cost (TCG, MCI, ORA). The interim discounts set by the CPUC in March 1996 are based on an avoided cost methodology, which adjusts for avoided retail costs such as end-user billing, marketing and customer service expenses.[88] While the CPUC is currently in the process of setting final resale discounts based on a more refined methodology, the earlier methodology is compliant with 252(d)(3).
3. Several services not being available for resale, namely voice mail, inside wire, threshold blocking for 900/976, and calling card (Time Warner, Working Assets, ORA, Sprint, MCI). Voice mail, IW, call blocking, and calling card services are not telecommunications services as defined under the Act [89] and are therefore not subject to the Act's resale requirement.
4. Promotions of less than 90 days must be resold, but without an avoided cost discount (MCI). After reviewing the FTA 96 and the FCC's Rule 51.613(a)(2), the CPUC determined that the Act does not require or prohibit the resale of short-term promotions at retail rates.[90] Since it is not a requirement under the Act, it cannot be considered a requirement under ' 271(c)(2)(B)(xiv).
5. Pacific's notices of changes in retail services are not timely and are vague (AT&T). The issue of advance notice of retail offerings is not addressed specifically in either the Act or the FCC's First Report and Order on

[88] D.96-03-020, California Public Utilities Commission, March 13, 1996, p. 28.

[89] "Telecommunications service" is defined to mean "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public regardless of the facilities used." 47 U.S.C. ' 153(46) "Telecommunications" is defined as "the transmission, between or among points specified by the user, of information of the user's choosing without change in the form or content of the information as sent and received." 47 U.S.C. ' 153(43)

[90] Opposition in Support of Motion for Summary Judgment of Defendant Commissioners, GTE California Incorporated, Plaintiff v. Conlon, et. al, defendants and related cross-action, In the United States District Court Northern District of California San Francisco Division, No. C-97-1756 SI and related cases C-97-1757, C-97-0670, and C97-0080, April 9, 1998, p.14.

Interconnection and therefore staff does not believe that it should be made a requirement for compliance with section 271.

6. Private line service not available at an avoided cost discount (AT&T). In 1995 the CPUC merged the retail private line tariff into the wholesale special access tariff. As a result, private line customers now purchase the same services which Pacific sells to IXCs. Since special access is essentially wholesale in nature, the CPUC determined that CLEC resellers should pay the same rates as IXCs. This is consistent with the FCC's analysis in &874 of its First Report and Order on Interconnection.

One of the issues raised warrants further examination, namely AT&T's allegation that Pacific offers consecutive 90-day promotions.

Pacific does not address the merits of AT&T's argument that Pacific offers consecutive 90-day offerings to evade its resale obligations. Instead, Pacific responds that the issue of promotions does not relate to Pacific's resale obligations under the checklist, but arises under the parties' ICA.[91] According to Pacific, AT&T inappropriately attempts to prejudge the outcome of its open arbitration case on this issue by raising the same issue in the instant 271 proceeding.[92] Staff does not agree. The Commission has an obligation to examine any factors raised in this proceeding that could impact checklist compliance.

According to &950 in the FCC's First Report and Order on Interconnection, short term promotions of 90 days or less need not be offered at a discount to resellers, while promotions of greater than 90 days must be offered at a wholesale discount. The FCC cautions that ILECs should not offer consecutive 90-day promotions to circumvent their wholesale obligation. Pacific is ordered to provide copies of all documentation on its promotional offerings since August 8, 1996, to the 271 staff in the Telecommunications Division by July 27, 1998. This issue may be explored further in the collaborative process.

[91] Curtis L. Hopfinger, Rebuttal Affidavit, May 20, 1998, &32.
[92] Curtis L. Hopfinger, Rebuttal Affidavit, May 20, 1998, &32.

**Issues Selected for the Collaborative Process**

- Pacific should demonstrate that the OSS systems it develops for resale comply with the Act and FCC rules.
- Review additional information provided by Pacific to determine if the company is in compliance with ' 51.613(a)(2) regarding promotional offerings.

# CHAPTER IV: OTHER TELECOMMUNICATIONS ACT REQUIREMENTS

## A. SECTION 272

### FCC Guidance in Prior 271 Filings

Section 271(d )(3)(B) requires that the BOCs' request for interLATA authority be carried out in accordance with section 272 of the Act.

Section 272 requires that a BOC (or its affiliate) must provide interLATA telecommunications services through a separate affiliate. It imposes five structural and transactional requirements upon the long distance affiliate. In evaluating the compliance of a BOC, the FCC determined that it may look to both the BOC's past and present behavior to make a predictive judgment concerning whether the BOC will comply with section 272. (Ameritech ¶ 347.)

Specifically, the BOC long distance affiliate must operate independently from the BOC; it must have books, records, and accounts which are separate from the BOC affiliate; it also must have separate officers, directors, and employees from the BOC affiliate; the BOC must treat the section 272 affiliates on an arms-length, nondiscriminatory basis. (Ameritech ¶¶ 349-353.) All transactions between the BOC and the section 272 affiliates must be publicly disclosed, and this disclosure must include the actual rates used to value the transactions, not simply stating the valuation method employed. If a BOC has transferred facilities and capabilities to any other affiliates, it must disclose transactions between those affiliates and its long-distance affiliate. (Ameritech ¶¶ 363-373.) Additionally, the section 272 affiliate may not obtain credit where upon default the creditor would have recourse against the assets of the BOC affiliate.

### Issues Selected for the Collaborative Process

The Commission recommends the following, the details of which could be developed in the collaborative process.

- Provide documentation of company policies and procedures related to the access to and dissemination between affiliates and LEC operations of competitive carrier CPNI and other proprietary information. Specifically, Pacific should provide proof that it is not using competitors' proprietary information for its own use. A specific example provided by AT&T (Olsen Aff.) is an allegation that Pacific misappropriated IXC trade secrets by passing on exchange access data.

- Provide verifiable evidence of separate officers for Pacific and all of its 272 affiliates. It is staff's position that the independence and separation of Pacific's and PB Com's boards of directors and officers from SBC is not absolutely clear, based on the record to date. The record on this issue shall be further developed and clarified so that a determination can be made as to whether officers, directors, and employees (as defined by the FCC) of all Pacific's 272 affiliates are separate from Pacific**.**

- Staff believes that it is necessary to determine the appropriate level of detail for "adequate disclosure of transactions" as well as Pacific's compliance with providing the information in a timely, appropriate fashion. In the collaborative process, staff would like to examine whether the following issues are appropriate or accurate concerns:

    - There is insufficient information to evaluate if transactions are fairly and accurately valued. Staff believes that Pacific should fully explain its valuation procedures and methods, and develop a process to provide such additional information, as considered necessary by staff for the Commission to determine which of the posted services and assets are available, on an equal pricing, basis to a competitor of PB Com;
    - Pacific should post on the Internet a written description of the asset or service transferred along with all terms and conditions;
    - Pacific should identify all transactions between itself and its 272 affiliates between the effective date of FTA 96 and August 12, 1997 for staff review. If considered appropriate by staff, said transactions between February 1996 and the date of approval to initiate interLATA services shall be disclosed and made subject to "true-up";
    - Pacific should provide additional information, as considered necessary by staff, to enable the Commission to evaluate if transactions are arms-length between the affiliates;
    - The record should be developed on FCC requirements or guidelines regarding the use of "Confidential" and "Proprietary" classifications to provide a basis for evaluating Pacific's compliance with any requirements or guidelines applicable to the use of said terms;
    - The record should be developed further as to Pacific's practices regarding the use of "CONFIDENTIAL" and "PROPRIETARY" restrictions on documents;
    - Criteria, procedures, and processes should be developed to provide data to fully demonstrate that the section 272 affiliates are treated on an arms-length basis and that non-affiliated carriers are treated the same as, and under that same terms and conditions, as section 272 affiliates for the purchase of tarriffed services, and where determined by staff to be appropriate, for the purchase of non-tarriffed services;

- Develop a record on the need for the need to conduct periodic internal audits for ongoing evaluation of Pacific's, and all of its subsidiaries and affiliates, and continued compliance with all requirements of section 272.

Finally, staff is concerned about any possibility that Pacific is providing central office information to affiliates that it is not making available to third-parties. In particular, staff is concerned that affiliates may not have been required to adhere to the same collocation request process(es) required of CLECs. Pacific should fully explain the company policies for affiliate and non-affiliate collocation in central offices, and provide information to demonstrate that CLEC's have not been treated differently than Pacific's affiliates in the provision of collocation space.

On a preliminary basis, information that staff finds relevant includes, but is not limited to: a list of the central offices where affiliates are located and the related amount of space in each central office; when the affiliate first obtained collocation space in each central office; a full explanation of the actual process**(**es) employed to evaluate affiliate requests for space in each of the respective central offices; and a list of each central office where non-affiliated third parties have requested collocation space but were turned down and an indication of whether affiliates have collocation space in those central offices.

## B. PRESENCE OF A FACILITIES-BASED COMPETITOR

Section 271(c)(1)(A) of FTA96 requires the presence of a facilities-based competitor. A BOC is seen to have met this requirement if it has entered into one or more binding agreements that have been approved under section 252 with one or more unaffiliated providers of telephone exchange service to residential and business subscribers. Such telephone service may be offered exclusively over the competing provider's own facilities or "predominantly" over its own facilities, in combination with the resale of telecommunications service provided by another carrier.

### FCC Guidance in Prior 271 Filings

The FCC has provided significant direction to help determine the presence of a facilities-based competitor. The four major sub-issues the FCC has addressed are:

1. Has the BOC entered into one or more binding agreements under 252?
2. Has the BOC provided access and interconnection to unaffiliated competing providers of local exchange service?
3. Are competitors providing service to both business and residential customers?
4. Is service being provided exclusively or predominantly over the CLEC's own facilities?

In the Ameritech/Michigan application, Ameritech relied on three interconnection agreements: Brooks, MFS Worldcom and TCG to prove the presence of a facilities-based competitor. The FCC found that one of the interconnection agreements Ameritech had entered into—Brooks Fiber—met the requirements of this section. Brooks was serving both business and residential customers through a combination of fiber rings connected to its switches and unbundled loops. The FCC did not agree with Brooks' argument that the ICA was not binding because the rates were interim, and went on to state that the ICA defined rates and obligations as they currently existed.

Some parties contended that the Brooks agreement did not count because Brooks was serving primarily in the Grand Rapids area. Parties also criticized the small number of access lines served by Brooks, which was reported as 21,786 in the Grand Rapids area (15,876 business and 5,910 residential customers). In sum, most Michigan customers did not appear to have a choice of telephone provider.

In its SBC/Oklahoma order, the FCC addressed the degree of competition necessary to meet this requirement. The FCC determined that the competitor had to actually be in the market and providing service for a fee, providing an actual commercial alternative to the BOC. The FCC indicated that it does not interpret 271(c)(1)(A) to require a specified level of geographic penetration by a competing carrier, nor does the FCC require a particular market share to be considered a competing carrier. The FCC noted that the Senate and House had rejected language that would have imposed such a requirement. The FCC does not reach the *de minimis* lines issue. However, the FCC stated in **&**79 that its interpretation of 271(c )(1)(A) does not preclude considering the state of local competition as part of its review under section 271(d)(3)(C).

Parties argued that the FCC could not count the MFS or TCG agreements to satisfy the requirements of 271 (d)(3)(C) because those entities were serving only business customers. Ameritech responded that business and residential customers need not be served by the same competitor. The FCC concurred with Ameritech's position and pointed to the legislative record of FTA96 when the phrase "an" unaffiliated competitor was changed to "one or more." This was seen to give greater flexibility to the BOCs since they would not be required to rely on one competitor to support their applications.

In its Ameritech order, the FCC also provided guidance of what it means for a competitor to provide service over its "own telephone exchange service facilities." Parties wondered whether that phase should include service over UNEs which are leased from the BOC or only service provided exclusively over facilities owned by the competitor. In **&**99 the FCC interpreted the language to include UNEs, and indicated that this would provide the BOC with greater incentive to cooperate in the provisioning of UNEs.

Since the ICA between Brooks and Ameritech was found to meet the requirements of this section, the FCC determined that it did not need to make a determination about the MFS or TCG agreements.

**Presence of A facilities-based competitor in Pacific's service territory.**

In its initial brief in this proceeding, Pacific includes a figure which lists the facilities-based CLECs which operate in its territory [93]. The figure breaks the facilities-based category down between business and residential customers. In their comments, several CLECs pointed out errors in Pacific's statistics, especially for some companies that were shown to provide service to residential customers using their own facilities. Two of the companies on the list—MFS and PacWest—do not have 252 agreements with Pacific because their agreements were negotiated prior to FTA96.

After adjusting Pacific's data, there are still several unaffiliated entities which provide service to business customers either exclusively over their own facilities or using Pacific's unbundled loops. Those companies include: Brooks Fiber, Cox, ELI, First World, ICG, MCI, Nextlink, NorthPoint, TCG, Time Warner, and WinStar. In addition, three cable companies are currently providing telephone service over their own facilities in various parts of the state. Those companies include: Cox, Media One, and TCI Telephony.

The companies listed have tariffs on file with the Commission and are selling services to the general public. In the Executive Summary to its March 31, 1998 brief, Pacific indicates that CLECs provide service to at least 243,000 business and residential customers over their own networks. In response, some of the CLECs disputed the data provided for their companies. Staff therefore attempted to gather data from the CLECs' own filings. However, not every operating CLEC chose to participate in this proceeding, and some that filed comments did not include customer counts. Those companies which did provide customer data, did so under seal, so staff was unable to disclose data for individual companies. Instead, staff tabulated business and residence data for six facilities-based competitors[94] and found they serve about 60,000 access lines in California. Separate data for residential customers was not available because only one company, Cox, provided that information and it was provided under seal.

Based on the above information, staff finds that Pacific has met the requirements of Section 271(c)(1)(A) for providing service to a facilities-based competitor. Based on staff's review of prior FCC 271 orders, it appears that the FCC takes a narrow interpretation of this section, and does not incorporate any sort of geographic coverage or market share test. Therefore, staff did not examine issues of geographic coverage or market share analysis in determining the basis of a facilities-based competitor.

[93] Brief in Support of Application by SBC for Provision of In-Region, InterLATA Services in California, March 31, 1998, Figure 2, p. 8.
[94] Covad, NextLink, TCG, Brooks, Cox, and MCI.

## C. STATE OF LOCAL COMPETITION

While staff found the requirements of 271(c )(1)(A) to be narrow in scope, it determined the public interest test in 271(d )(3)(C) to be much broader in scope. A key element of that public interest test is to determine the state of competition in California.

Many parties have presented comments on that issue. Generally, Pacific pointed to access lines won by competitors, unbundled loops provisioned, number portability deployed, and interconnection trunks installed as proof of the healthy state of competition. On the other hand, competitors pointed to OSS problems and other areas where Pacific's actions have thwarted competition rather than advanced it. Given staff's present assessment of Pacific's draft 271 application, any thorough evaluation of the state of competition should be undertaken at a later time when the deficiencies identified by staff to encompass Pacific's implementation of local competition have been resolved.